No. _____

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON
No. 79447-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

S. MICHEAL KUNATH *et al.*

Respondents,

v.

CITY OF SEATTLE

Petitioner.

PETITIONER CITY OF SEATTLE'S PETITION FOR REVIEW

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I. INTRODUCTION & IDENTITY OF PETITIONER

This case presents two significant questions of Washington law that are of substantial public interest. The first question is whether imposing a tax on total personal income over $250,000 a year is permissible under Article VII, Section 1 of the Washington Constitution. Two erroneous 5-4 decisions in the 1930s characterized income as "property" subject to the uniformity of taxation provisions of Article VII, Section 1. The analysis underlying these decisions was based on faulty reasoning and relied on federal case law that was subsequently overturned as "a relic of a bygone era." For decades these decisions have limited the ability of Washington State and local governments to adopt a fair tax system that meets the needs of a growing population and weathers the impact of economic cycles. As a result, Washington now has the most regressive tax system in the country. Low-income and middle-income Washingtonians pay a disproportionate share of their income in taxes to support state and local government compared to residents with high incomes. The "income-is-property" decisions are a textbook example of a situation where prior precedent should be overruled.

The second question is the scope of a city's authority to impose a tax on total personal income. The Court of Appeals correctly held that Petitioner City of Seattle ("City") has the authority to impose property taxes

in general, including an income tax (assuming income is property). The Court of Appeals also correctly noted that "RCW 35A.11.020's unambiguous language demonstrates the legislature's intent to provide a 'general grant of taxing power' to raise revenue for local purposes." Opinion at 14 (quoting *King Cty. v. City of Algona*, 101 Wn.2d 789, 792, 681 P.2d 1281 (1984)). This Court should make clear that if income is not "property" for tax purposes, the City has authority to impose an income tax. The scope of city taxing power is particularly significant and of public import as cities struggle to provide needed services to their residents.

The City seeks to address pressing issues facing its residents without exacerbating regressive tax burdens. To do so, the City enacted a 2.25% tax on residents' total personal income over $250,000 per year ($500,000 for joint filers), under its broad authority to exercise "all powers" of local taxation under RCW 35A.11.020 and to impose excises under RCW 35A.82.020 and RCW 35.22.280(32).

The Court of Appeals identified that proper analysis of the issues "depends on the precise nature of the tax"—that is, whether income is property under Article VII, Section 1. Opinion at 3. Everything else flows from that determination. The court found, however, that it was "constrained by stare decisis to follow our Supreme Court's existing decisions that an income tax is a property tax." *Id.* Accordingly, the court concluded that any

argument for a different constitutional characterization of income "can be resolved only by our Supreme Court." *Id.* at 29.

Today, this Court has the opportunity and obligation to do what the Court of Appeals could not: hold that income is not "property" under Article VII, Section 1. This Court can right the ship, reverse decisions that were wrong when decided and wrong today, and reconcile inconsistencies in its constitutional jurisprudence. And the Court can reaffirm cities' broadly delegated taxing power.

These significant questions of Washington law are of substantial public import and can be resolved only by this Court. Review should therefore be granted under RAP 13.4(b)(3) and (b)(4).

II. COURT OF APPEALS DECISION

The Court of Appeals issued its Published Opinion on July 15, 2019, as changed by Order Denying Motion for Reconsideration and Changing Opinion dated August 7, 2019, and as confirmed by Order Denying Motion for Reconsideration and Request for Oral Argument, dated October 30, 2019. A copy of the Opinion and Orders are included in the Appendix.

III. ISSUES PRESENTED FOR REVIEW

1. Prior case law holding that income is "property" is erroneous and harmful. The legal underpinnings of those decisions have disappeared.

The majority of other courts correctly hold that an income tax is not a property tax. Should this Court overturn its prior holdings and conclude that income is not "property" for tax uniformity purposes under Article VII, Section 1 of the Washington Constitution?

2. The legislature has granted the City broad authority to exercise "all powers of taxation for local purposes" and to impose excise taxes. If income is not property, does the City have the authority under these statutes to impose a tax measured by income over certain thresholds, either as an excise tax or as a *sui generis* tax?

3. *Conditional Issue for Review*: The City's tax is assessed against "total income" attributable to the individual taxpayer as reported to the Internal Revenue Service ("IRS"), **prior** to reductions that result in net taxable income for federal tax purposes. Is the City's tax on total personal income a tax on "net" income under RCW 36.65.030? This issue is moot unless Respondents cross-appeal the Court of Appeals' holding that RCW 36.65.030, a statute prohibiting counties, cities, and city-county governments from imposing net income taxes, violates Article II, Section 19's single-subject rule and this Court grants review of the issue.

IV. STATEMENT OF THE CASE

Seattle is in a dynamic era, highlighted by historic growth and historic problems. CP 372-73. There are ever-increasing needs for the City

to address, including lack of affordable housing, homelessness, inadequate provision of mental and public health services, and growing demand and need for transit. CP 372-74. The City must confront these issues in the context of state and local taxes that already disproportionately burden low- and middle-income households. CP 373, 562-63.

To raise revenue to address these challenges, the City adopted a new tax on its residents. Seattle Municipal Code ("SMC") 5.65.030.B. The City's tax is imposed on personal "total income" of Seattle residents as reported to the IRS, without any adjustments or deductions. SMC 5.65.020.G.[1] Individual residents who report more than $250,000 per year in total income and married, jointly filing residents who report more than $500,000 per year in total income to the IRS, pay 2.25% of personal income over those thresholds. SMC 5.65.030.B. Residents who report total income less than the thresholds are taxed at a rate of 0%. *Id*.

The City estimates that the income tax would generate $140 million in new revenue annually. CP 402. The Ordinance's fiscal note states that

[1] The IRS's issuance of a new Form 1040 in 2018 did not meaningfully change "total income" subject to the City's tax. SMC 5.65.020.G provides that "total income" means "the amount reported as income before any adjustments, deductions, or credits on a resident taxpayer's United States individual income tax return for the tax year, listed as 'total income' on line 22 of Internal Revenue Service Form 1040…or the equivalent on any form issued by the [IRS]." In 2017 (when the City adopted the tax), the majority of taxpayers reported "total income" on line 22 of IRS Form 1040. This is equivalent to "total income" reported on line 6 of the new Form 1040 issued by the IRS for the 2018 tax year.

these additional funds "would have a significant impact on City revenues" and could be used to address the policy priorities described above. *Id.* The City Budget Office concluded that the income thresholds were three to nine times what an average household needs to live in Seattle. CP 409 (only top three percent of households exceed thresholds).

Plaintiffs filed four separate lawsuits challenging the City's authority to impose the Ordinance and its constitutionality. The cases were consolidated. On cross-motions for summary judgment, the trial court ruled that the City's income tax is invalid and rejected Intervenor Economic Opportunity Institute's ("EOI's") claims that RCW 36.65.030 is unconstitutional under Article II, Sections 19 and 37. CP 1313-18.

In a unanimous published opinion, the Court of Appeals held the City has statutory authority to impose a personal income tax, but invalidated the City's tax as unconstitutional under this Court's precedent that a graduated income tax violates the Washington Constitution. Opinion at 3. The Court of Appeals noted that it was bound by "stare decisis," *id.,* and declined "regardless of the quality of the argument…to offer an advisory opinion on whether an income tax should be analyzed as an excise tax or a tax sui generis," *id.* at 15. In analyzing the City's statutory authority, the court noted that RCW 35A.11.020's "unambiguous language…provide[s] a 'general grant of taxing power' to raise revenue for local purposes." *Id.* at

14 (quoting *Algona*, 101 Wn.2d at 792). But the court stated it could go no further because "[t]he breadth of the taxing authority from this statute…is not so great as to overwhelm article VII, section 1 of our constitution." *Id.* at 15. Finally, the court held that RCW 36.65.030 violates Article II, Section 19's single-subject rule and, thus, the statute's bar on local "net income" taxes did not apply. *Id.* at 18-26.

V. GROUNDS FOR REVIEW

This Court should accept review because this case involves "a significant question of law under the Constitution of the State of Washington" and "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(3), (4).

A. The Court should accept review under RAP 13.4(b)(3) because determining the nature of an income tax is a significant constitutional question.

The Court of Appeals correctly identified the threshold question in this case in the very beginning of its Opinion, namely, "whether an income tax is a property tax, an excise tax, or its own separate category of tax." Opinion at 3. Whether the constitutional uniformity provision applies and whether the City has authority to impose the tax depend on the answer. Determination of the answer depends entirely on whether income is "property" under Article VII, Section 1. The Court of Appeals' hands were

tied, but this Court can and should review its prior incorrect and inconsistent decisions purporting to answer this constitutional question.

1. The Court should correct its erroneous precedent that an income tax is a property tax under the Washington Constitution.

In the 1930s, this Court held that income is a form of "property" for purposes of Article VII, Section 1, and therefore an income tax is a property tax. *See Culliton v. Chase*, 174 Wash. 363, 374, 25 P.2d 81 (1933); *Jensen v. Henneford*, 185 Wash. 209, 219-20, 53 P.2d 607 (1936). While this Court subsequently has repeated that holding, it has not engaged in substantive analysis of the question in more than 80 years. But the primary case law relied on for the holding that income is property was incorrect and unfounded at the time, and in any event its legal underpinnings have vanished.

In *Culliton*, the seminal case deciding "income is property" under the Washington Constitution, the Court held a graduated income tax was a "property tax" that violated the constitution's uniformity requirement for property taxes. 174 Wash. at 378-79. But that holding is not tenable for several reasons. First, the *Culliton* Court reasoned: "It has been definitely decided in this state that an income tax is a property tax, which should set the question at rest here." *Id*. at 376. The sole authority cited in support of this statement was *Aberdeen Savings & Loan Assoc. v. Chase* ("*Aberdeen*"),

157 Wash. 351, 289 P. 536 (1930). *Id*. But that case addressed only a federal Equal Protection Clause challenge, relying almost exclusively on *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389, 48 S. Ct. 553, 72 L. Ed. 927 (1928). *Aberdeen*, 157 Wash. at 361-64, 373-74. Indeed, *Aberdeen* was decided in July of 1930, before Article VII, Section 1 was amended in November 1930 to include the uniformity provision at issue. Laws 1929, ch. 191, §1, approved Nov. 1930. Contrary to *Culliton* (and contrary to a clarifying opinion in *Aberdeen* by this Court) the *Aberdeen* Court did **not** rule that income is property for purposes of the Washington Constitution. *See Washington Mut. Sav. Bank v. Chase*, 157 Wash. 351, 392, 290 P. 697 (1930).

In 1973, the U.S. Supreme Court expressly overruled *Quaker City Cab Co.*, noting that it was "a relic of a bygone era." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973). Accordingly, the legal underpinnings of *Aberdeen* and thus *Culliton* have changed and are no longer valid.

Second, the *Culliton* Court relied on the conclusory statement that "[t]he overwhelming weight of judicial authority is that 'income' is property and a tax upon income is a tax upon property." 174 Wash. at 374. This was and is incorrect. By the 1930s the majority of courts held that an income tax is **not** a property tax. Professor Wade Newhouse, in his exhaustive treatise

on state taxation, concludes that by the 1930s only "two state courts [were left] seemingly standing by their strict uniformity interpretations with respect to income taxes: Washington and Pennsylvania. … **A majority of those courts reviewed above have characterized the income tax as a 'nonproperty' tax.** Without determining its precise nature in relation to all those other various kinds of taxes which are not property taxes, it was ruled not to be a tax upon property."[2] Washington's treatment of an income tax as a property tax was and remains an outlier.

Third, the *Culliton* Court relied on what it characterized as the "peculiarly forceful constitutional definition" of property in the Washington Constitution—"everything, whether tangible or intangible, subject to ownership"—and reasoned that "income is either property…or no one owns it." 174 Wash. at 374. But the Court's tautological and conclusory statement is incorrect. The Constitution's definition of property as "anything subject to ownership" does not answer the relevant question, it simply raises it: "Is income subject to ownership?" The nature of income is not that of a static asset subject to ownership that can be kept or sold, such as land (tangible property), liquid monies (cash, deposits in checking and savings accounts),

[2] Wade J. Newhouse, *Constitutional Uniformity and Equality in State Taxation* 2021, 2029 (2nd ed. 1984) (emphasis added); *see also Thorpe v. Mahin*, 250 N.E.2d 633, 634-36 (Ill. 1969) (reexamining and reversing a 1932 case that held income is property after "review[ing] the many State cases dealing with this question and find[ing] the weight of authority to be that an income tax is not a property tax").

or stocks and bonds (intangible property). The U.S. Supreme Court articulated this concept to distinguish between property and income:

> [A taxpayer's] income may be taxed, although he owns no property, and his property may be taxed, although it produces no income. The two taxes are measured by different standards, the one by the amount of income received over a period of time, the other by the value of the property at a particular date. Income is taxed but once; the same property may be taxed recurrently.

People of the State of New York ex rel. Cohn v. Graves, 300 U.S. 308, 314, 57 S. Ct. 466, 81 L. Ed. 666 (1937).

Further, the 1930 constitutional amendment defining "property" in the Constitution was enacted in response to the trend of wealth being placed into intangible property (and not taxed), rather than real property (taxed); this had resulted in lower revenue and undue tax burdens on real property. *See Culliton*, 174 Wash. at 385-87 (Blake, J., dissenting).[3] That concern does not support characterizing income as intangible property; one cannot transfer wealth into income in order to escape taxation like one can with assets like stocks and bonds.

Culliton has had a ripple effect throughout Washington

[3] *See also* Don Burrows, *The Economics and Politics of Washington's Taxes From Statehood to 2013* at 131 (2013) ("At the time of the 1930 amendment's passage, many of its supporters believed that the new classification authority would allow the state to impose personal and corporate income taxes. … [They] favored shifting the tax burden from the owners of real property to holders of securities, bonds and other intangible properties that accounted for over 60 percent of the wealth in the state.").

jurisprudence. The erroneous concept—that it is "well-settled" that income is property—has been repeated throughout Washington's income tax case law without thoughtful examination.[4] Because *Culliton*'s statement of the law was incorrect and unfounded, and because the bases on which *Aberdeen* was decided have since disappeared, it is time for this Court to revisit the constitutional question.

Re-examining *Culliton* and its progeny is consistent with this Court's doctrine of *stare decisis*. "'[S]tare decisis is neither a straightjacket nor an immutable rule; it leaves room for courts to balance their respect for precedent against insights gleaned from new developments, and to make informed judgments as to whether earlier decisions retain preclusive force.'" *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207 (2014) (quoting *Carpenters Local Union No. 26 v. U.S. Fid. & Guar. Co.*, 215 F.3d 136, 142 (1st Cir. 2000)). This Court has identified two circumstances in which it will reconsider prior decisions. First, "[a]n opinion can be incorrect when it was announced, or it can become incorrect because the passage of time and the development of

[4] *See, e.g.*, *Jensen*, 185 Wash. at 216-17 (rejecting personal income tax framed as privilege tax and relying on *Culliton* for the premise that "income is property, and that an income tax is a property tax"); *Petroleum Nav. Co. v. Henneford*, 185 Wash. 495, 496-97, 55 P.2d 1056 (1936) (rejecting corporate income tax framed as privilege tax based on *Aberdeen*, *Culliton*, and *Jensen*); *Power, Inc. v. Huntley*, 39 Wn.2d 191, 195, 235 P.2d 173 (1951) (rejecting corporate income tax framed as an excise tax based on *Aberdeen*).

legal doctrines undermine its bases." *State v. Abdulle*, 174 Wn.2d 411, 415-16, 275 P.3d 1113 (2012). Second, this Court will reconsider precedent "when the legal underpinnings of [the] precedent have changed or disappeared altogether." *W.G. Clark Constr. Co.*, 180 Wn.2d at 66 (overturning federal preemption cases due to evolving U.S. Supreme Court precedent and national shift in preemption jurisprudence). *See Yim v. City of Seattle*, ___ Wn.2d ___ , No. 96817-9, 2019 WL 5997021, at *4 (Wash. Nov. 14, 2019) (declining to follow precedent requiring heightened scrutiny where "federal legal underpinnings of our precedent have disappeared because the United States Supreme Court requires only rational basis review in substantive due process challenges to laws regulating the use of property"). Both of these circumstances apply here.

2. The Court should resolve inconsistencies in its constitutional decisions related to taxes measured by income.

This Court has upheld taxes measured by income in some circumstances, but not others. The Court should take this opportunity to resolve these inconsistencies in its constitutional jurisprudence.

In *State ex rel. Stiner v. Yelle*, this Court held that the statewide business and occupation tax, as measured by a business' gross proceeds, sales, or income, "does not concern itself with income which has been acquired, but only with the privilege of acquiring, and that the amount of the tax is measured by the amount of income in no way affects the purpose

of the act or the principle involved." 174 Wash. 402, 407, 25 P.2d 91 (1933). Thus, a privilege/benefit tax measured by the gross income of a business is an excise tax, not a property tax.

Similarly, in *Supply Laundry Co. v. Jenner*, this Court rejected a challenge to the same business and occupation tax statute, affirming that it is an excise tax, not a property tax. 178 Wash. 72, 76-78, 34 P.2d 363 (1934). In doing so, the Court upheld application of the tax to state employees earning salaries of more than $200 per month. *Id.* at 74, 78.

In contrast, in *Jensen v. Henneford*, the Court held that a tax measured by a person's income was a property tax, not an excise tax. 185 Wash. at 217-18. The Court rejected the argument it was a "tax on the privilege of receiving net income," stating that "the mere right to own and hold property cannot be made subject of an excise tax, because to tax by reason of ownership of property is to tax the property itself. . . . The right to receive property (income in this instance) is but a necessary element of ownership, and, without such a right to receive, the ownership is but an empty thing and of no value whatever." *Id.* at 217-219 (citations omitted). The Court distinguished *Stiner* and *Supply Laundry Co.* by stating that those cases involved a tax on a privilege granted or permitted by the state. *Id*. But this inconsistency cannot be rationalized because individuals can be taxed based on privilege/benefit received in the same manner as businesses. *See*

Thurston County v. Tenino Stone Quarries, 44 Wash. 351, 356, 87 P. 634 (1906) (upholding tax on individuals based on privilege/benefit received from residency).

In *Stiner*, this Court laid out the rationale behind a privilege/benefit tax: laws and courts are created by government "for the protection of human rights, the rights of property and to prevent the weak or credulous from becoming the helpless victims of the force or fraud of the strong and the cunning." 174 Wash. at 406. As a result, "every citizen is now measurably safe in pursuing any gainful occupation with the expectation that he will be by the state fully protected and made secure in his property investment, and also in his gains therefrom. This is the privilege, far above mere property, which it is now sought to tax to the end that it may **pay in some part its fair share of the cost to the state of its creation and continuance**." *Id.* at 406-07 (emphasis added).

This is the precise rationale courts have expressed in holding an income tax is not a tax on the income itself, but the measure of a privilege or benefit. As the U.S. Supreme Court has stated:

> Domicil itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. . . . **A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits**.

Graves, 300 U.S. at 313 (emphasis added).[5] Holding that a tax measured by income on one type of taxpayer (businesses and occupations, government salaries) is not subject to Article VII, Section 1, but a tax measured by income on a different type of taxpayer (individuals) is subject to Article VII, Section 1 is inconsistent and should be addressed. Much like the state's B&O tax, the City provides protection and infrastructure for residents. There is no rational distinction between the City's tax on an individual resident measured by total income and the gross income tax on a business resident this Court has upheld.

B. The Court should accept review under RAP 13.4(b)(4) because determining whether the City may impose a personal income tax to support government services without exacerbating income inequality is an issue of substantial public importance.

This Court's prompt resolution of the issues here is of great importance because it will guide the people and government as they seek to address vexing issues on how best to pay for public services without further worsening income inequality and increasing the burden of taxes on our most economically vulnerable residents.

First, Washington's adherence to the incorrect and unfounded statements in *Culliton* has had a significant negative impact on the state's

[5] *See also Reynolds Metal Co. v. Martin*, 269 Ky. 378, 107 S.W.2d 251, 258-59 (Ky. 1937) (The taxpayer "is required to pay this tax because he is domiciled or doing business in the state, and so enjoys the protection of government, the right to earn a living, to receive, keep, and expend, income, and to be safe in his property and pursuit of happiness.").

and Seattle's citizens. As far back as 1932, the people passed a statewide income tax initiative to address significant harm: "'Existing methods of taxation, primarily based on property holdings, are inadequate, inequitable and economically unsound. Present conditions point the need of a new subject matter for taxation, which should be based on the ability to pay. Earnings for a given period are a fair measure of such ability.'" *Culliton*, 174 Wash. at 372 (quoting initiative). The same is true today. Washington has the most regressive tax structure in the nation, with our low- and moderate-income earners paying a greater share of their income in taxes than high-income households. CP 373, 562-63. And Seattle's tax structure has been characterized as the most regressive of all cities in Washington.[6] Raising new revenue within the existing tax structure harms low- and moderate-income earners and limits the City's ability to meet increasing need for City services. *Culliton* and its progeny have created and exacerbated this harm.

Second, once this Court determines the constitutional issue and holds that the City's income tax is not subject to Article VII, Section 1's uniformity requirement, the remaining issue is whether the City has the

[6] *See* Gene Balk, *Seattle taxes ranked most unfair in Washington — a state among the harshest on the poor nationwide*, The Seattle Times, Apr. 13, 2018, updated Apr. 15, 2018, *available at* https://www.seattletimes.com/seattle-news/data/seattle-taxes-ranked-most-unfair-in-washington-a-state-among-the-harshest-on-the-poor-nationwide/ (last visited Nov. 6, 2019).

authority to impose a personal income tax. This question raises important issues regarding the scope of municipal tax powers. Here, the Court of Appeals correctly noted that "RCW 35A.11.020's unambiguous language demonstrates the legislature's intent to provide a general grant of taxing power to raise revenue for local purposes." Opinion at 14 (internal quotation omitted); *see also City of Spokane v. Horton*, 189 Wn.2d 696, 708, 406 P.3d 638 (2017) ("The statute provides that code cities have powers of taxation within constitutional limits.").[7] Whether a personal income tax is an excise tax or a *sui generis* tax, the City is granted authority to impose the tax under this statute. Further, personal income taxes frequently are characterized as excise taxes. The City has authority to impose excise taxes under RCW 35A.82.020 and RCW 35.22.280(32).

The people and local governments will benefit from the Court's guidance on the validity of the City's authority under these statutes. Such guidance will provide direction on whether a local income tax may be a viable option should the people or elected leaders decide to investigate one as a policy choice for their jurisdiction. And resolution of the authority issue is especially of great importance to the people of Seattle. Their elected leaders have decided on a personal income tax as a proper policy choice.

[7] *See also id.* at 713 (Madsen, J., dissenting) ("By granting 'all powers of taxation' to code cities, the legislature's intent is clear—code cities are to have all taxing powers at the local level that the legislature possesses at the state level.").

But Seattleites already have had to wait more than two years to enjoy the benefits from this progressive form of taxation. They should not have to wait any longer. Review is proper under RAP 13.4(b)(4).

VI. CONCLUSION

This case provides the unique juxtaposition of a central question of constitutional law with issues that are on the forefront of today's policy discussions. This Court is presented the opportunity to address and correct its erroneous cases applying constitutional uniformity to personal income taxes. Further, it is of public importance for the Court to provide guidance on the extent to which progressive taxation on income may be an option to fund public services without further burdening the most economically vulnerable Washingtonians. This Court should accept review.

RESPECTFULLY SUBMITTED this 15th day of November, 2019.

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APPENDIX

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7/15/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

S. MICHAEL KUNATH,

Respondent/Cross Appellant,

v.

CITY OF SEATTLE,

Appellant/Cross Respondent,

ECONOMIC OPPORTUNITY INSTITUTE,

Appellant/Cross Respondent,

SUZIE BURKE, an individual; GENE BURRUS and LEAH BURRUS, as individuals and the marital community comprised thereof, PAIGE DAVIS, an individual; FAYE GARNEAU, an individual; KRISTI DALE HOOFMAN, an individual; LEWIS M. HOROWITZ, an individual; TERESA JONES and NIGEL JONES, as individuals and the marital community comprised thereof; NICK LUCIO and JESSICA LUCIO, as individuals and the marital community comprised thereof; LINDA R. MITCHELL, an individual; ERIKA KRISTINA NAGY, an individual; DON ROOT, an individual; LISA STERRITT and BRENT STERRITT, as individuals and the marital community comprised thereof; and NORMA TSUBOI, an individual,

Respondents,

No. 79447-4-I

v.

CITY OF SEATTLE, a municipality; SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, a department of the City of Seattle; and FRED PODESTA, Director of the Seattle Department of Finance and Administrative Services, in his official capacity,

Appellants.

DENA LEVINE, an individual, CHRISTOPHER RUFO, an individual; MARTIN TOBIAS, an individual; NICHOLAS KERR, an individual; CHRIS MCKENZIE, an individual,

Respondents,

v.

CITY OF SEATTLE, a municipal corporation,

Appellant.

SCOTT SHOCK; SALLY OLJAR; STEVE DAVIES; JOHN PALMER,

Respondents,

v.

CITY OF SEATTLE, a Washington municipal corporation,

Appellant.

PUBLISHED OPINION

FILED: July 15, 2019

VERELLEN, J. — Whether the income tax levied by the city of Seattle is statutorily authorized and constitutional depends on the precise nature of the tax. For decades, scholars have debated whether an income tax is a property tax, an excise tax, or its own separate category of tax.[1] In a series of decisions dating back to 1933, the Washington Supreme Court has unequivocally held income is property, a tax on income is a tax on property, taxes on property must be uniformly levied, and a graduated income tax is not uniform. Therefore, the Washington Constitution bars any graduated income tax.[2]

Here, the superior court ruled Seattle did not have statutory authority to enact its graduated income tax. Seattle and the Economic Opportunity Institute (EOI) initially sought review in our Supreme Court, arguing in part that the Supreme Court should reconsider the precise nature of an income tax. The Supreme Court transferred the appeal to this court. We are constrained by stare decisis to follow our Supreme Court's existing decisions that an income tax is a property tax. We have no authority to overrule, revise, or abrogate a decision by our Supreme Court.

We conclude Seattle has the statutory authority to adopt a property tax on income, but our state constitution's uniformity requirement bars Seattle's graduated income tax. Therefore, the Seattle income tax ordinance is unconstitutional.

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[1] See, e.g., Robert C. Brown, The Nature of the Income Tax, 17 MINN. L. REV. 127 (1933).

[2] Power, Inc. v. Huntley, 39 Wn.2d 191, 194, 235 P.2d 173 (1951) (quoting Culliton v. Chase, 174 Wash. 363, 374, 25 P.2d 81 (1933)); Jensen v. Henneford, 185 Wash. 209, 53 P.2d 607 (1936).

FACTS

Seattle enacted an ordinance in July of 2017 imposing an income tax on high-income residents.[3] Seattle "imposed a tax on the total income of every resident taxpayer in the amount of their total income multiplied by" 2.25 percent for all income above a certain threshold.[4] The ordinance defines "total income" as "the amount reported as income before any adjustments, deductions, or credits on a resident taxpayer's United States individual income tax return for the tax year, listed as 'total income' on line 22 of Internal Revenue Service Form 1040."[5]

The tax creates two classes of taxpayers: individuals filing singly and married taxpayers filing jointly.[6] The tax subdivides each class based on income. Individual taxpayers earning more than $250,000 and married taxpayers earning more than $500,000 must pay 2.25 percent of all income over those thresholds.[7] To illustrate, a family earning $600,000 would pay $2,250 in taxes, which is 2.25 percent of $100,000.

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[3] Ch. 5.65 SEATTLE MUNICIPAL CODE (SMC).

[4] SMC § 5.65.030(B).

[5] SMC § 5.65.020(G). Taxpayers filing Form IRS 1040A, Form 1041, and the like would calculate their payment based on the equivalent line. Id. Total income is now line 6 on the 2018 version of Form 1040. Schedule 1 for the 2018 version of Form 1040 tabulates total income using the same lines as the former Form 1040.

[6] SMC § 5.65.030(B). Each class includes similarly situated taxpayers. For example, the tax classifies a married taxpayer filing separately with an unmarried taxpayer filing individually. Id.

[7] SMC § 5.65.030(B).

The Dana Levine group of plaintiffs, the Suzie Burke group, the Scott Shock group, and individual Michael Kunath (tax opponents)[8] filed four separate lawsuits to enjoin enforcement of the ordinance.[9] The court granted EOI's motion to intervene as a defendant and consolidated the lawsuits.[10]

The superior court granted summary judgment for the tax opponents, concluding no statute gave Seattle the authority to levy an income tax and, even if Seattle otherwise had the authority, RCW 36.65.030 prohibited it from levying a net income tax.[11] The court also denied EOI's constitutional challenges to RCW 36.65.030. Having resolved the case on statutory grounds, the court declined to rule on Shock's remaining equal protection challenges to the ordinance.[12] Kunath then moved to sanction Seattle and EOI under Civil Rule 11 and for an award of attorney fees under the common fund doctrine.[13] The court denied both motions.[14]

Seattle and EOI appeal the court's grant of summary judgment, and Kunath cross appeals the court's denial of his motions for sanctions and attorney fees.

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[8] For clarity, we refer by name to arguments made by an individual party where only that party advanced the argument.

[9] Clerk's Papers (CP) at 1, 1608, 1629, 1658.

[10] CP at 74-75, 247-51, 1713-14.

[11] CP at 1305-13, 1318.

[12] CP at 1313-18.

[13] CP at 1320, 1365.

[14] CP at 1544, 1548.

ANALYSIS

I. Background

After 1930, article VII, section 1 of our state constitution has required that "[a]ll taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word 'property' as used herein shall mean and include everything, whether tangible or intangible, subject to ownership."[15]

Our Supreme Court's first opportunity to interpret this language came in the 1933 case of Culliton v. Chase.[16] That year, voters passed a statewide initiative levying a graduated tax on net income.[17] Taxpayers challenged the initiative, arguing the graduated income tax was unconstitutional because it taxed property and therefore violated the recently-enacted uniformity clause in article VII, section 1.[18] In declaring the tax unconstitutional, the Culliton court first distinguished income taxes from excise taxes, reasoning that excise taxes are levied on an activity—such as the sale, consumption, or manufacture of goods—or upon a privilege or license granted by the state.[19] The court also distinguished income taxes from estate taxes,

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[15] This language was added by constitutional amendment 14. Additional amendments to article VII, section 1 do not affect the language relevant here.

[16] 174 Wash. 363, 387-88, 25 P.2d 81 (1933) (Blake, J. dissenting) (discussing the recent history of article VII, section 1 and income taxation in the state).

[17] Id. at 371, 372.

[18] Id. at 373.

[19] Id. at 377.

reasoning that an estate tax "is not really a tax at all" because "[i]t is an impost laid but one time" on the state-granted right of heirs "to take" from an estate.[20]

Turning to the "comprehensive definition of 'property'" in the constitution, the court classified income as intangible property, stating, "Income is either property under [article VII, section 1], or no one owns it."[21] "The overwhelming weight of judicial authority is that 'income' is property and a tax upon income is a tax upon property."[22] Because any income tax in Washington had to be uniform or be unconstitutional,[23] the graduated income tax was unconstitutional under article VII, section 1.[24]

Three years later, the court again considered a net income tax in Jensen v. Henneford.[25] The State levied a graduated income tax on "'every resident of [Washington] for the privilege of receiving income therein while enjoying protections of its laws.'"[26] Based on that language, the State argued it levied an excise tax not subject to the constitution's uniformity clause.[27] But "[t]he character of a tax is determined by its incidents, not by its name."[28] Because Culliton established that the broad definition of property in article VII, section 1 encompassed income, the Jensen

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[20] Id. at 378.

[21] Id. at 374.

[22] Id.

[23] Id. at 379.

[24] Id. at 378-79.

[25] 185 Wash. 209, 53 P.2d 607 (1936).

[26] Id. at 212 (emphasis omitted) (quoting LAWS OF 1935, ch. 178, § 2).

[27] Id. at 215, 217.

[28] Id. at 217.

court held the purported excise tax was an income tax subject to the uniformity clause in article VII, section 1.[29] Because the taxing scheme taxed income below $4,000 at three percent and income above $4,000 at four percent, it was an unconstitutional nonuniform tax on property.[30]

In 1951, Power, Inc. v. Huntley evaluated a statewide "corporation excise tax" that levied a four percent tax on a corporation's net income "for the privilege of exercising its corporate franchise in this state or for the privilege of doing business in this state."[31] The tax did not apply to sole proprietorships or partnerships.[32] The central question before the court was whether the tax fell on income rather than being a true excise. If a tax on income, then it violated the uniformity clause of article VII, section 1 by only affecting certain forms of corporations and not other companies in competition with them.[33] The Power court set aside the language of the tax, analyzed its incidents, and concluded it was "a mere property tax masquerading as an excise."[34] Under the taxing scheme, a Washington corporation with zero net income would not pay any income tax, while a foreign corporation doing business in Washington would pay taxes on activities unconnected to the privilege of conducting business in Washington.[35] Also, the scheme hewed closely to federal corporate

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[29] Id. at 219-20.

[30] Id. at 220.

[31] 39 Wn.2d 191, 193, 235 P.2d 173 (1951).

[32] Id. at 195.

[33] Id.

[34] Id. at 196 (internal quotation marks omitted).

[35] Id. at 196-97.

income tax law, illustrating its true nature as an income tax. The court concluded the tax was a nonuniform property tax and therefore unconstitutional.[36]

We consider the statutory and constitutional issues in this case within the clear bounds of these precedents.[37] "It is no longer subject to question . . . that income is property."[38] Taxes are to be evaluated by their incidents rather than by their legislative designation.[39] And a net income tax, whether levied on a corporation or a natural person, must be uniform to comply with article VII, section 1 of our constitution.[40]

II. Justiciability

Before addressing the tax's statutory and constitutional validity, we must address Shock's threshold contention that these issues are nonjusticiable political questions.[41] Shock contends, "The City's request that this Court reverse nearly a century of case law holding that income is personal property, and therefore subject to the Constitution's uniformity tax requirement, is not appropriate for judicial determination."[42] But it is well settled that Washington courts have the power to hear

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[36] Id.

[37] See 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006) ("When the Court of Appeals fails to follow directly controlling authority by this court, it errs.").

[38] Power, 39 Wn.2d at 194 (citing Culliton, 174 Wash. at 374).

[39] Jensen, 185 Wash. at 217.

[40] Power, 39 Wn.2d at 195 (citing WASH. CONST. art. VII, § 1); Jensen, 185 Wash. at 219; Culliton, 174 Wash. at 374.

[41] Lee v. State, 185 Wn.2d 608, 616, 374 P.3d 157 (2016).

[42] Shock Resp't's Br. at 9.

constitutional challenges to tax laws,[43] which is why we are guided by "nearly a century of case law" on these issues. The issues raised in this case are justiciable.

III. Standard of Review

We review summary judgment orders and questions of constitutional and statutory interpretation de novo.[44] We interpret statutes and ordinances to discern and implement the legislative body's intent.[45] We give effect to a statute's plain meaning as a statement of legislative intent.[46] A statute's plain meaning can be discerned from the language of the statute itself, other provisions of the same act, and related statutes.[47] Terms in a statute are read with their common and ordinary meaning, absent ambiguity or a statutory definition.[48] A dictionary can supply an undefined term's ordinary meaning.[49] "'Only when the plain, unambiguous meaning

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[43] See Lee, 185 Wn.2d at 616 (citing WASH. CONST. art. IV, § 4; RCW 2.04.010) (Supreme Court has jurisdiction over constitutional and statutory challenges to statutes); RCW 2.06.030 (Supreme Court can transfer cases to the court of appeals); see also WASH. CONST. art. IV, § 6 (superior courts have original jurisdiction over "the legality of any tax").

[44] Sheehan v. Cent. Puget Sound Reg'l Transit Auth., 155 Wn.2d 790, 796-97, 123 P.3d 88 (2005).

[45] Watson v. City of Seattle, 189 Wn.2d 149, 158, 401 P.3d 1 (2017); Sheehan, 155 Wn.2d at 797.

[46] Sheehan, 155 Wn.2d at 797 (quoting Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)).

[47] Id. (quoting Campbell & Gwinn, 146 Wn.2d at 10); Washington Pub. Ports Ass'n v. State, Dep't of Revenue, 148 Wn.2d 637, 647-48, 62 P.3d 462 (2003) (citing Campbell & Gwinn, 146 Wn.2d at 11-12).

[48] HomeStreet, Inc. v. State, Dep't of Revenue, 166 Wn.2d 444, 451, 210 P.3d 297 (2009).

[49] Id.

cannot be derived through such an inquiry will it be appropriate [for a reviewing court] to resort to aids to construction.'"[50]

IV. Statutory Taxing Authority

Washington municipalities have no inherent power to levy taxes because our constitution vests that power with the legislature.[51] But the constitution authorizes legislative delegations of taxing power to municipalities. Under article VII, section 9, the legislature can delegate power to municipalities "to make local improvements by special assessment." Article XI, section 12 both prohibits the legislature from levying local taxes for "municipal purposes" and empowers the legislature to enact "general laws" that "vest in [municipalities] the power to assess and collect taxes" for municipal purposes. These constitutional provisions are not self-executing, however, so the legislature must grant taxing authority to the municipality.[52] Municipal taxes enacted without delegated authority are invalid.[53]

RCW 35.22.280(2) explicitly grants first-class cities authority to levy a property tax on real or personal property for municipal needs.[54] Under Culliton and its

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[50] Sheehan, 155 Wn.2d at 797 (alteration in original) (internal quotation marks omitted) (quoting Campbell & Gwinn, 146 Wn.2d at 12).

[51] City of Spokane v. Horton, 189 Wn.2d 696, 702, 406 P.3d 638 (2017) (citing WASH. Const. art. I, § 1; State ex rel. King County Tax Comm'n, 174 Wash. 668, 671, 26 P.2d 80 (1933)).

[52] King County v. City of Algona, 101 Wn.2d 789, 791, 681 P.2d 1281 (1984); Carkonen v. Williams, 76 Wn.2d 617, 627, 458 P.2d 280 (1969).

[53] Watson, 189 Wn.2d at 166-67.

[54] Seattle's municipal needs include addressing homelessness, providing affordable housing, education, and transit, and providing funding for mental health and public health services. SMC § 5.65.010(A).

progeny, an income tax is a property tax.[55] Thus, Seattle's income tax was authorized by RCW 35.22.280(2). At oral argument, tax opponents asserted RCW 35.22.280(2) did not authorize Seattle's tax because income is a form of intangible property rather than real or personal property. But personal property can be intangible,[56] and income is intangible property under our constitution.[57] Accordingly, Seattle possessed valid statutory authority to levy a property tax on income.[58]

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[55] E.g., Jensen, 185 Wash. 216 (explaining that "income is property, and that an income tax is a property tax, and not an excise tax").

[56] RAY ANDREWS BROWN, WALTER B. RAUSHENBUSH, THE LAW OF PERSONAL PROPERTY § 8.1, at 154 (3rd ed. 1975) (explaining that "the major part of what today constitutes personal property . . . consists of so-called choses in action"); see Heermans v. Blakeslee, 97 Wash. 647, 648-49, 167 P. 128 (1917) (holding that an assignment of the right to receive income is assignment of a chose in action); In re Marriage of Kraft, 61 Wn. App. 45, 49 n.2, 808 P.2d 1176 (1991) (explaining the right to receive income can be a chose in action); see also State of Cal. v. Tax Comm'n of State, 55 Wn.2d 155, 158, 346 P.2d 1006 (1959) ("Corporate shares of stock are personal property.").

[57] Culliton, 174 Wash. at 374 (for our constitution's taxation provisions "incomes necessarily fall within the category of intangible property"). In addition, as tax opponents acknowledged at oral argument, our constitution does not prohibit taxes on income so long as those taxes are uniform. See id. at 379 ("It may be possible to frame an income tax law which will assess all incomes uniformly and comply with our [c]onstitution.").

[58] Of course, neither Seattle nor EOI argued for the applicability of RCW 35.22.280(2) because both contend that the income tax is not a property tax at all. The starting point for our analysis has to be the binding precedent that a tax on income is a tax on property.

In a statement of additional authorities, tax opponents point us to a statute excluding "intangible personal property" from ad valorem taxes. RCW 84.36.070(1). The premise of the tax opponents' contention appears to be that any tax on income is a prohibited ad valorem tax on intangible personal property. But this premise is inconsistent with the statute's text and legislative history. First, RCW 84.36.070 has never listed "income" as intangible property. RCW 84.36.070(2); LAWS OF 1931, ch. 96, § 1. Second, the legislature enacted RCW 84.36.070 in 1931 following the passage of amendment 14 to article VII, section 1, which allowed taxation of intangible personal property. State ex rel. Atwood v. Wooster, 163 Wash. 659, 663-64, 2 P.2d

Seattle also contends RCW 35.22.570 grants first-class cities authority to levy an income tax by according it powers enumerated in Title 35A RCW, the optional municipal code.[59] Seattle is a first-class city with a governing charter and has not opted into the optional municipal code.[60] Nevertheless, RCW 35.22.570 grants first class charter cities "all the powers which are conferred upon incorporated cities and towns by this title [Title 35 RCW] or other laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree."

The plain language of RCW 35.22.570 grants first-class charter cities "all of the powers" conferred upon all other "incorporated cities" by both Title 35 RCW and Title 35A RCW. Additionally, we construe RCW 35.22.570 liberally when determining the legislature's intent.[61] Thus, it appears the legislature intended to grant broad powers of self-governance on first-class charter cities through the grants of authority in both Title 35 RCW and Title 35A RCW.[62]

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653 (1931) (citing LAWS OF 1931, ch. 96, § 1). And even after the Culliton decision clearly stated income is intangible property, the legislature enacted the net income tax at issue in Jensen. See Jensen, 185 Wash. at 211, 215-16 (citing LAWS OF 1935, ch. 178). It would be incongruous to conclude that at the same time the legislature enacted a tax on income, it also intended RCW 84.36.070 to impede a tax on income. We decline to read the word "income" into RCW 84.36.070(2).

[59] Seattle Appellant's Br. at 41, 46.

[60] See RCW 35.01.010 ("A first-class city is a city with a population of ten thousand or more at the time of its organization or reorganization that has a charter adopted under [a]rticle XI, section 10, of the state [c]onstitution.").

[61] RCW 35.22.900.

[62] See Watson, 189 Wn.2d at 170 n.8 (relying on RCW 35.22.570 to conclude that RCW 35A.82.020 granted Seattle "the same tax authority granted to code cities"); see also Hugh Spitzer, "Home Rule" vs. "Dillon's Rule" for Washington Cities, 38 SEATTLE U.L. REV. 809, 839-40 (2015) (explaining that the 1965 amendments to chapter 35.22 RCW "expressly broadened the powers of first class charter cities.").

In the optional municipal code, RCW 35A.11.020 grants general taxing authority to cities.[63] "Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes."[64] A related statute provides "[p]owers of . . . taxation . . . may be exercised by the legislative bodies of code cities in the manner provided in this title or by the general law of the state where not inconsistent with this title."[65] And the legislature's statement of purpose for chapter 35A.11 RCW is unambiguously broad: "The general grant of municipal power conferred by this chapter and this title . . . is intended to confer the greatest power of local self-government consistent with the [c]onstitution of this state and shall be construed liberally in favor of such cities."[66] RCW 35A.11.020's unambiguous language demonstrates the legislature's intent to provide a "general grant of taxing power" to raise revenue for local purposes.[67]

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[63] See City of Port Angeles v. Our Water-Our Choice!, 170 Wn.2d 1, 15 n.7, 239 P.3d 589 (2010) ("In our view, RCW 35A.11.020 grants code cities broad, though specific, powers notwithstanding 'Dillon's Rule' (which limits municipal powers to those specifically granted or necessarily implied)."); accord id. at 20 (Sanders, J. dissenting) (RCW 35A.11.020 "is a general grant of authority.").

[64] RCW 35A.11.020 (emphasis added). The statute expressly withholds authority for municipal levies of taxes on liquor, insurers, and insurance producers. Id. (citing RCW 66.08.120, 48.14.020, and 48.14.080). These restrictions are not relevant here.

[65] RCW 35A.11.030.

[66] RCW 35A.11.050; see City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1, 181 Wn. App. 326, 337, 325 P.3d 419 (2014) (noting the "legislature's directive that all grants of authority in Title 35A RCW, whether specific or general, be liberally construed in favor of the municipality").

[67] Algona, 101 Wn.2d at 792. Tax opponents rely on Algona to contend RCW 35A.11.020 confers no actual taxing authority and instead shows that a city requires additional and specific tax authorization. In Algona, the city levied a business and occupation tax on revenue King County received from operating a solid waste transfer station in the city. Id. at 790. King County sued to recoup its tax payments. Id. at 791. The county argued, and the court agreed, that the governmental immunity

The breadth of the taxing authority from this statute, however, is not so great as to overwhelm article VII, section 1 of our constitution. Culliton holds that income is property under the constitution, so any proper exercise of authority to tax income would levy a tax on property, no matter the label attached by the enacting legislative body. Thus, regardless of the quality of the argument, we decline Seattle's invitation to offer an advisory opinion on whether an income tax should be analyzed as an excise tax or a tax sui generis.

Tax opponents argue that the legislature constrained its grants of taxing authority to Seattle by enacting RCW 36.65.030, a statute prohibiting any "county, city, or city-county" from levying "a tax on net income." Seattle and EOI insist the statute is inapplicable because Seattle's ordinance taxes "total" income rather than "net" income.

"'The character of a tax is determined by its incidents, not by its name.'"[68] To determine the incidence of a tax, we consider "who is being taxed, what is being taxed, and how the tax is measured."[69] Here, there is no dispute that Seattle residents would be taxed on their income. The issue is whether the amount a Seattle resident would pay in taxes is measured by their net income.

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doctrine prevented one municipality from taxing another without express statutory authorization. Id. at 793. Because chapter 35A.11 RCW did not expressly allow one municipality to tax another, the court held the city's business and occupation tax was unconstitutional. Id. at 794-95. Here, Seattle attempted to tax city residents rather than another municipality. Algona is not helpful to the tax opponents.

[68] Washington Pub. Ports Ass'n, 148 Wn.2d at 650 (quoting Harbour Village Apartments v. City of Mukilteo, 139 Wn.2d 604, 607, 989 P.2d 542 (1999)).

[69] P. Lorillard Co. v. City of Seattle, 83 Wn.2d 586, 589, 521 P.2d 208 (1974).

Seattle defines "total income" as "the amount reported as income before any adjustments, deductions, or credits on a resident taxpayer's United States individual income tax return for the tax year, listed as 'total income' on line 22 of Internal Revenue Service Form 1040."[70] RCW 36.65.030 does not define "net income," so we look to the dictionary.[71] "Net income" is "the balance of gross income remaining after deducting related costs and expenses [usually] for a given period and losses allocable to the period."[72] Thus, to be something other than a net income tax, Seattle's tax must extend to gross income. For the purposes of this analysis, "gross income" is "the total of all revenue or receipts [usually] for a given period except receipts or returns of capital."[73] Seattle contends the total income amount on line 22 of Form 1040 is "the unadjusted gross income received by an individual or joint resident taxpayer."[74] We disagree.

Line 22 on IRS Form 1040 is an aggregate of different income sources.[75] It includes wages, business income, rental and partnership income, and 11 other sources.[76] But several of those sources are measured by net income. For example, the sole proprietor of a business would calculate her income using IRS Form

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[70] SMC § 5.65.020(G).

[71] HomeStreet, 166 Wn.2d at 451.

[72] WEBSTER'S THIRD NEW INT'L DICTIONARY OF THE ENGLISH LANGUAGE 1520 (3d ed. 2002).

[73] Id. at 1002.

[74] Seattle Reply Br. at 3 (boldface omitted).

[75] CP at 1147.

[76] Id.

Schedule C and report it on line 12 of Form 1040.[77] Using Schedule C, she would first total her gross income.[78] Next, she would tabulate 20 different expenses, including legal and professional services, taxes and licenses, wages, and advertising, and then deduct the total of those expenses from her gross income.[79] From that amount, she could also deduct the expense of the business use of her home.[80] The amount remaining is identified on Schedule C as her "net profit (or loss)" to be reported on Form 1040.[81] Similarly, the amount reported on line 17 of Form 1040 is also a net calculation.[82]

Seattle and EOI argue line 22 reflects gross income when viewed from an individual taxpayer's perspective because any deductions are for expenses attributable to a business rather than the individual taxpayer.[83] But as amici Greater Seattle Business Association and Ethnic Business Coalition explain, a sole proprietor's calculation of her total income represents her gross income from her individual business activities only after deducting her individual costs and expenses from conducting those activities. For that sole proprietor, her income is the business's income, from any perspective. Further, any taxpayer could have a large

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[77] CP at 1147, 1149.

[78] CP at 1149.

[79] Id.

[80] Id.

[81] Id.

[82] See CP at 1155-56. IRS Form Schedule E is used to calculate the amount reported on line 17. Id. Like Schedule C, a landlord using Schedule E would deduct expenses for advertising, travel, repairs, taxes, utilities, depreciation, and others when calculating the amount of rental income to report on Form 1040. Id.

[83] EOI Appellant's Br. at 41-42.

gross income but no total income because of the dozens of above-the-line deductions permitted in the tax code.[84] Seattle's analogy to take-home pay as the measure of true total income is not compelling. Line 22 is not a measure of gross income.

We agree with the trial court's conclusion: "[A] 'total income' figure that includes 'net proceeds' necessarily reflects the result of a netting process, and thus is 'net income.'"[85] Because Seattle's income tax measures a city resident's taxable income based on the sum of net calculations, it is a net income tax. For purposes of RCW 36.65.030, Seattle's income tax is a tax on net rather than gross income. Seattle's income tax falls within the prohibition in RCW 36.65.030.

This statutory prohibition is irrelevant, however, if it is itself unconstitutional. EOI contends RCW 36.65.030 is unconstitutional because the legislation that enacted the prohibition, Substitute Senate Bill 4313, violated sections 19 and 37 of article II in our constitution.

Article II, section 19 states, "No bill shall embrace more than one subject, and that shall be expressed in the title."[86] This translates into two requirements: the "single subject rule" and the "subject in title rule."[87] EOI's appeal focuses solely on the single subject rule.

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[84] See I.R.C. § 62(a)(2) (listing above-the-line deductions).

[85] CP at 1313.

[86] WASH. CONST. art. II, § 19.

[87] Citizens for Responsible Wildlife Mgmt. v. State, 149 Wn.2d 622, 632, 71 P.3d 644 (2003).

A section 19 analysis "is limited to the title and body of the act"[88] because "the constitutional inquiry is founded on the question whether a measure is drafted in such a way that those voting on it may be required to vote for something of which the voter disapproves in order to obtain approval of an unrelated law."[89] Evidence beyond the bill's four corners is beyond the court's inquiry.[90]

"The plain language of [article II, section 19] makes it mandatory that the members of the legislature be given the opportunity to consider legislative subjects in separate bills, so that each subject may stand or fall upon its own merits or demerits."[91] Accordingly, the single subject rule guards against logrolling, which is combining multiple measures that could not pass separately, and riding, which is pushing through unpopular legislation by attaching it to popular or necessary legislation.[92] Where legislation has multiple subjects, "'it is impossible for the court to

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[88] Id. at 639; see Wash. Fed'n of State Emps. v. State, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995) ("[A] court examines the body of the act to determine whether the title reflects the subject matter of the act.").

[89] Amalg. Transit Union Local 587 v. State, 142 Wn.2d 183, 212, 11 P.3d 762 (2000).

[90] See Wildlife Mgmt., 149 Wn.2d at 639 (disregarding as "not relevant" arguments that were based on testimony given in a state senate hearing about a measure's constitutionality under the single subject rule); Amalg. Transit, 142 Wn.2d at 212 ("Thus, regardless of what is in the *Voters Pamphlet* or the history of the initiative, the rational relationship inquiry centers on what is in the measure itself, i.e., whether the measure contains unrelated laws.").

[91] Washington Toll Bridge Auth. v. State, 49 Wn.2d 520, 525, 304 P.2d 676 (1956).

[92] Am. Hotel & Lodging Ass'n v. City of Seattle, 6 Wn. App. 2d 928, 938, 432 P.3d 434 (2018) (citing Wash. Ass'n for Substance Abuse & Violence Prevention v. State, 174 Wn.2d 642, 655, 278 P.3d 632 (2012) (WASAVP)); Robert D. Cooter & Michael D. Gilbert, A Theory of Direct Democracy and the Single Subject Rule, 110 COLUM. L. REV. 687, 705-06 (2010)), review granted, 193 Wn.2d 1008, 439 P.3d 1069 (2019); see Amalg. Transit, 142 Wn.2d at 190 (single subject rule prevents legislators from having to vote for a law they disfavor to obtain approval of a law they favor).

assess whether either subject would have received majority support if voted on separately.'"[93] A bill that violates the single subject rule is void in its entirety.[94]

When determining if a bill violated the single subject rule, the first step is classifying the bill's title as general or restrictive.[95] "A general title is broad, comprehensive, and generic; a few well-chosen words, suggesting the general topic, are all that is needed."[96] A restrictive title attempts to carve out a particular part of a subject to be the single subject of the legislation.[97] SSB 4313 was titled "AN ACT relating to local government; and adding a new chapter to Title 36 RCW."[98] Because this is expansive and generic, SSB 4313 has a general title.[99]

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[93] Am. Hotel, 6 Wn. App. 2d at 939 (quoting City of Burien v. Kiga, 144 Wn.2d 819, 825, 31 P.3d 659 (2001)).

[94] Lee, 185 Wn.2d at 620.

[95] State v. Haviland, 186 Wn. App. 214, 219, 345 P.3d 831 (2015) (quoting State v. Alexander, 184 Wash. App. 892, 340 P.3d 247 (2014)); see Lee, 185 Wn.2d at 620 ("Whether an initiative violates the single subject rule generally starts with the ballot title.").

[96] Lee, 185 Wn.2d at 620-21.

[97] Wildlife Mgmt., 149 Wn.2d at 633 (quoting State v. Broadaway, 133 Wn.2d 118, 127, 942 P.2d 363 (1997)).

[98] LAWS OF 1984, ch. 91. EOI concedes this is the title for purposes of appeal. EOI Appellant's Br. at 28 n.7. Even if EOI continued to argue on appeal, as it did below, that the relevant title was the one added by the code reviser, "the legislative title is the relevant title because it . . . is the title which appears on the proposed bill before [legislators]." Broadaway, 133 Wn.2d at 125.

[99] EOI and tax opponents disagree about whether the topic of SSB 4313 is "local government" or "city-county government." See EOI Appellant's Br. at 29; Kunath Resp't's Br. at 23-24; Levine/Burke Resp. to EOI Br. at 11-13. We need not resolve this dispute because it does not affect the constitutionality of SSB 4313.

Where legislation has a general title, the next step is determining whether the legislation has rational unity.[100] "Rational unity exists when the matters within the body of the initiative are germane to the general title and to one another."[101] A useful measure for rational unity is whether a bill's myriad subparts are connected by a common unifying theme.[102]

In Barde v. State, the court held two statutes were unconstitutionally enacted in violation of article II, section 19.[103] The legislature passed a bill entitled "AN ACT Relating to the taking or withholding of property."[104] The bill had two sections. The first made it a gross misdemeanor to kill, injure, secret, or convert any dog.[105] The second authorized recovery of costs and attorney fees for a replevin action to recover

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[100] WASAVP, 174 Wn.2d at 656 (quoting Kiga, 144 Wn.2d at 826); Haviland, 186 Wn. App. at 220 (quoting Amal. Transit, 142 Wn.2d at 209).

[101] Filo Foods, LLC v. City of SeaTac, 183 Wn.2d 770, 782-83, 357 P.3d 1040 (2015) (emphasis added); see WASAVP, 174 Wn.2d at 656 (explaining that evaluating rational unity involves looking for the "'general purpose of the particular legislative act'") (quoting State ex rel. Wash. Toll Bridge Auth. v. Yelle, 61 Wn.2d 28, 33, 377 P.2d 466 (1962.)).

[102] See Wash. Fed'n of State Emps., 127 Wn.2d at 576 (Talmadge, J., concurring in part) ("If the title of the enactment is a 'laundry list' of the contents of the legislation, this is suggestive of the possibility that the [l]egislature or the proponents of a popular enactment could not articulate a single unifying principle for the contents of the measure. Similarly, a law containing subdivisions that allegedly relate to a subject such as 'fiscal affairs,' 'government,' or 'public welfare' could violate the single-subject provision because the subject matter was excessively general."). Justice Talmadge identifies five indicia he argues should be weighed when considering a question of rational unity. Id. at 573-76. These are largely evidentiary considerations. Id. Because our Supreme Court has since held section 19 analyses are to be restricted to the legislation itself, Wildlife Mgmt., 149 Wn.2d at 639, only the concept of a "single unifying principle" is still helpful. Thus, the parties' arguments that rely on extrinsic evidence are unavailing.

[103] 90 Wn.2d 470, 472, 584 P.2d 390 (1978).

[104] Id. at 471.

[105] Id.

stolen goods from a pawnbroker.[106] The court noted an arguable unity existed "between replevin and 'dognapping' inasmuch as both relate to personal property," but the actual substance of the second section involved recovery of costs and attorney fees for a civil tort that only happened to be replevin.[107] Accordingly, the court held no rational unity existed between the subsections and invalidated the statutes enacted by the bill.[108]

More recently, the court in Washington Association for Substance Abuse and Violence Prevention v. State held a large, comprehensive ballot initiative did not violate the single subject rule.[109] The initiative had a lengthy, but general, title:

> Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor). This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution.[110]

The initiative directed certain expenditures from the "Liquor Revolving Fund," which was the longstanding state account funded by all monies received by the then-Liquor Control Board.[111] The initiative also imposed fees on retailers and distributors of hard liquor, modified wine distribution laws, authorized private hard liquor sales, and changed advertising regulations for alcohol.[112] Central to the court's analysis was the well-established link between alcohol regulation, public safety, and revenue

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[106] Id.

[107] Id. at 472.

[108] Id.

[109] 174 Wn.2d 642, 660, 278 P.3d 632 (2012).

[110] Id. at 647.

[111] Id. at 648.

[112] Id. at 649-51.

generation.[113] And liquor was historically governed by a single comprehensive regulatory regime.[114] Unlike Barde, the initiative had liquor regulation as its common unifying theme rather than combining two unlike subjects. The initiative satisfied the single subject rule because its comprehensive regulations all had clear links to the title and each other by directly regulating alcoholic beverages or by being closely related to the consequences of alcohol regulation.[115]

In American Hotel & Lodging Association v. City of Seattle, this court recently held a Seattle ballot initiative that "concern[ed] health, safety and labor standards for Seattle hotel employees" violated single subject restrictions.[116] The ballot initiative contained "at least four distinct and separate purposes."[117] Part 1 protected hotel employees from violent assault and sexual harassment.[118] Part 2 protected hotel employees from on-the-job injuries.[119] Part 3 aimed to improve hotel employees' access to health care.[120] Part 4 provided job security to certain low income hotel workers.[121] Although each section related to the general health, safety, and labor issues of hotel employees, the sections' public policy purposes and operative

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[113] See id. at 657 ("I-1183's provision of funds for public safety actually has a closer nexus to the subject of liquor than does the general revenue provision that has existed since the State began regulating liquor.").

[114] Id. 659.

[115] Id.

[116] 6 Wn. App. 2d 928, 932, 432 P.3d 434 (2018), review granted, 193 Wn.2d 1008, 439 P.3d 1069 (2019) (emphasis omitted).

[117] Id. at 941.

[118] Id.

[119] Id.

[120] Id.

[121] Id. at 942.

provisions were "completely unrelated" to each other.[122] In the absence of a common unifying theme, this ballot initiative violated the single subject standard.

Here, Substitute Senate Bill (SSB) 4313 contained five sections legally relevant for purposes of a single subject analysis.[123] Tax opponents argue SSB 4313 had rational unity because article XI, section 16 of the constitution requires that any restriction imposed on a city-county also be imposed on cities and counties, and SSB 4313 was intended to implement article XI, section 16.[124] But they fail to identify the required rational unity between all five operative sections of the bill.[125]

Unlike Washington Association for Substance Abuse and Violence Prevention, the several subjects in SSB 4313 lack a common unifying theme. Section 2 preserved school districts as entities distinct from city-counties.[126] Section 3 prohibited any municipality from levying a net income tax.[127] Section 4 concerned state revenue calculations and allocations during the year following the formation of a city-county.[128] Section 5 preserved certain collective bargaining rights for police

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[122] Id.

[123] Although six of the seven sections in the legislation were codified at chapter 36.65 RCW, LAWS OF 1984, ch. 91, § 7, the statement of intent in section 1 of the legislation is not part of the single subject analysis. WASAVP, 174 Wn.2d at 659 ("Policy expressions [ ] do not contribute additional subjects within the meaning of the single-subject rule."). Section 7 of SSB 4313 was a technical section stating that sections 1 through 6 in the bill would form a new chapter.

[124] Kunath Resp't's Br. at 22-23; Levine/Burke Resp. to EOI Br. at 14-15.

[125] See Filo, 183 Wn.2d at 782-83 (rational unity is required within all subsections and with the title).

[126] LAWS OF 1984, ch. 91, § 2.

[127] Id. § 3.

[128] Id. § 4.

officers and firefighters in city-county governments.[129] And section 6 preserved pension and disability benefits for all current and former municipal employees affected by the formation of a city-county.[130] Three of the five substantive sections are limited to the city-county form of government, and section 4 applies to state government financing regarding a city-county. But section 3 applies broadly to cities, counties, and city-counties. The city-county form of government is not a true unifying theme for these disparate subsections. The subsections are not adequately germane to each other. The only seeming connection between all subsections of the bill was that they generally relate to, as the bill title states, local government. But this general subject is so expansive that literally any set of legislative enactments affecting any aspect of towns, cities, or city-counties would purport to satisfy the rational unity test, thus undermining the purpose of the single subject rule.[131] As in Barde and American Hotel, SSB 4313 lacks rational unity between its subparts.

Because it is impossible to assess whether the broad prohibition on net income taxes would have passed without the bill's unrelated provisions, SSB 4313 violated the single subject rule in article II, section 19.[132] Accepting tax opponents' arguments would set a low bar for rational unity and fail to uphold the purposes of article II, section 19. Accordingly, chapter 36.65 RCW, which was enacted in its

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[129] Id. § 5.

[130] Id. § 6.

[131] See Wash. Fed'n of State Emps., 127 Wn.2d at 576 (Talmadge, J., concurring in part) (an "excessively general" subject could violate the single subject rule where the bill lacks a unifying theme); see also Wash. Toll Bridge Auth., 49 Wn.2d at 524 (explaining the purpose of the single subject rule "is to avoid hodgepodge and 'logrolling' legislation") (quoting Power, 39 Wn.2d at 198).

[132] Kiga, 144 Wn.2d at 825.

entirety by SSB 4313, is unconstitutional.[133] Because we hold SSB 4313 is unconstitutional in its entirety for violating article II, section 19, we do not need to consider whether section three of SSB 4313 also violated article II, section 37.

V. Constitutionality of Seattle's Graduated Income Tax

Having addressed the statutory questions surrounding Seattle's authority to levy a net income tax, we now consider whether its tax is unconstitutional. Article VII, section 1 contains a comprehensive definition of "property" and requires that all taxes be uniform on the same classes of property.[134]

> All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership.[135]

As discussed above, this text first appeared in article VII, section 1 in 1930 after the passage of amendment 14. And in Culliton, our Supreme Court held that within the meaning of our constitution, "income is property, and that an income tax is a property tax."[136] Because Seattle levied a property tax on income, it is unconstitutional unless levied uniformly.

Under Seattle's graduated taxing scheme, income is broken into two classes and taxed at different rates depending on its classification.[137] For example, all individual income above $250,000 is taxed at a rate of 2.25 percent, and all income

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[133] See Lee, 185 Wn.2d at 620 (legislation "is void in its entirety" when it violates the single subject rule).

[134] Culliton, 174 Wash. at 374.

[135] WASH. CONST. art. VII, § 1.

[136] Jensen, 185 Wash. at 216 (citing Culliton, 174 Wash. at 374).

[137] SMC § 5.65.030(B).

below $250,000 is taxed at zero percent.[138] This is nonuniform taxation levied upon income, a single class of property. Whether authorized by RCW 35.22.280(2) or RCW 35A.11.020, Seattle's graduated income tax violates the uniformity clause in article VII, section 1 and is unconstitutional.[139]

VI. Cross Appeal

The remaining issues concern Kunath's cross appeal of the court's denial of his motions for CR 11 sanctions and for attorney fees.

We review a decision to impose or deny CR 11 sanctions for abuse of discretion.[140] The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system.[141] A filing "must lack a legal or factual basis before it can become the proper subject of CR 11 sanctions."[142] And even then, an attorney cannot be sanctioned unless they also failed to conduct a reasonable inquiry into the

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[138] Id.

[139] Because the tax is unconstitutional under article VII, section 1, we decline to consider Shock's argument that the tax violates equal protection guarantees in the Washington and United States Constitutions; although, we note that statutes based on economic distinctions generally satisfy the rational basis test. See Welch v. Henry, 305 U.S. 134, 143-44, 59 S. Ct. 121, 83 L. Ed. 87 (1938) (income tax rate classifications do not violate the equal protection clause of the Fourteenth Amendment so long as "reasonabl[y] relat[ed] to a legitimate end of governmental action"); accord Am. Legion Post # 149 v. Wash. State Dep't of Health, 164 Wn.2d 570, 609, 192 P.3d 306 (2008) ("Social and economic legislation that does not implicate a suspect class or fundamental right is presumed to be rational; this presumption may be overcome by a clear showing that the law is arbitrary and irrational.").

[140] Heckard v. Murray, 5 Wn. App. 2d 586, 594, 428 P.3d 141 (2018), review denied, 192 Wn.2d 1013, 432 P.3d 783 (2019). Although Kunath moved for CR 11 sanctions against both Seattle and EOI, on appeal, he appears to have conceded denial of his motion for sanctions against Seattle by arguing the trial court erred only as to EOI. See Kunath Resp't's Br. at 17-20, 46.

[141] Heckard, 5 Wn. App. 2d at 595.

[142] Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099 (1992).

factual and legal basis of the claim.[143] EOI's argument before the trial court about the title of SSB 4313 may have been incorrect,[144] but making a legally inaccurate argument does not, without more, expose an attorney to sanctions under CR 11.[145] Kunath fails to show the court abused its discretion.

We review a decision to award or deny attorney fees for abuse of discretion.[146] Kunath sought fees under the "common fund" doctrine.[147] He requested that the court award him $35,000,000, which is 25 percent of the $140,000,000 Seattle estimated it would collect annually through its income tax.[148] The common fund doctrine is a narrow equitable ground that authorizes an award of fees "only when a litigant preserves or creates a common fund for the benefit of others as well as themselves."[149] Attorney fees awarded under the common fund doctrine are paid by the prevailing party, which pays attorney fees out of the fund created or preserved for their benefit.[150] For example, in Bowles v. Department of Retirement Systems, the court affirmed the grant of attorney fees to a few plaintiffs under the common fund

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[143] Id.

[144] See Broadaway, 133 Wn.2d at 368 ("[T]he legislative title is the relevant title because it . . . is the title which appears on the proposed bill before [legislators].").

[145] CR 11(a)(2).

[146] Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc., 143 Wn. App. 345, 363, 177 P.3d 755 (2008).

[147] CP at 1367.

[148] CP at 1368.

[149] City of Sequim v. Malkasian, 157 Wn.2d 251, 271, 138 P.3d 943 (2006).

[150] Bowles v. Wash. Dep't of Ret. Sys., 121 Wn.2d 52, 70-71, 847 P.2d 440 (1993).

doctrine where they successfully sued to secure payment of additional monies into their pension plan, thereby increasing payments to all plan members.[151]

Kunath insists he preserved a common fund: "$140 million of Seattle residents' funds will be preserved . . . because without this action, that amount would have been taken from them."[152] He especially emphasizes cases noting that a substantial benefit to another is part of the common fund doctrine. But merely benefiting another is not sufficient. The fact that Seattle residents do not have to pay the income tax neither establishes nor preserves a common fund. Contrary to Kunath's argument, Bowles featured a single pension plan—a common fund—and did not require aggregation of the funds needed to pay the award. Seattle should not be compelled to "obtain reimbursement" from benefited taxpayers in order to collect and then redistribute funds to Kunath.[153] The court did not abuse its discretion by declining to award attorney fees.[154]

CONCLUSION

Article VII, section 1 of our constitution, as interpreted by Culliton, considers income to be intangible property, so a tax on income is a tax on property. Arguments to the contrary can be resolved only by our Supreme Court.

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[151] 121 Wn.2d 52, 57-61, 847 P.2d 440 (1993).

[152] Kunath Resp't's Br. at 39.

[153] Kunath Reply Br. at 7-8.

[154] Kunath also requests sanctions on appeal under RAP 18.9. Other than a single phrase on the last page of his response brief stating the court should "impose RAP 18.9 sanctions," Kunath Resp't's Br. at 46, he fails to make any argument in favor of sanctions or even specify the party to be sanctioned. We deny his request.

In this case, the legislature granted Seattle authority to tax intangible personal property, including income, under either RCW 35.22.280(2) or RCW 35A.11.020. RCW 36.65.030 prohibits any municipal levy of a net income tax. But the enacting bill for RCW 36.65.030 violated the constitutional prohibition in article II, section 19 on legislation with more than a single subject. Consequently, RCW 36.65.030 is unconstitutional and no statutory prohibition limits Seattle's authority to levy a property tax on income.

Under the doctrine of stare decisis, we are bound by our Supreme Court's precedential decisions that a tax on income is a property tax and that a graduated income tax violates the uniformity provision of article VII, section 1. Because Seattle enacted a graduated tax on income, it is unconstitutional.

Based upon this alternative rationale, we affirm summary judgment in favor of the tax opponents.

WE CONCUR:

Andrus, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

S. MICHAEL KUNATH, Respondent/Cross Appellant, v. CITY OF SEATTLE, Appellant/Cross Respondent, ECONOMIC OPPORTUNITY INSTITUTE, Appellant/Cross Respondent, SUZIE BURKE, an individual; GENE BURRUS and LEAH BURRUS, as individuals and the marital community comprised thereof, PAIGE DAVIS, an individual; FAYE GARNEAU, an individual; KRISTI DALE HOOFMAN, an individual; LEWIS M. HOROWITZ, an individual; TERESA JONES and NIGEL JONES, as individuals and the marital community comprised thereof; NICK LUCIO and JESSICA LUCIO, as individuals and the marital community comprised thereof; LINDA R. MITCHELL, an individual; ERIKA KRISTINA NAGY, an individual; DON ROOT, an individual; LISA STERRITT and BRENT STERRITT, as individuals and the marital community comprised thereof; and NORMA TSUBOI, an individual, Respondents,	)	No. 79447-7-I

v.

CITY OF SEATTLE, a municipality; SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, a department of the City of Seattle; and FRED PODESTA, Director of the Seattle Department of Finance and Administrative Services, in his official capacity,

Appellants.

DENA LEVINE, an individual, CHRISTOPHER RUFO, an individual; MARTIN TOBIAS, an individual; NICHOLAS KERR, an individual; CHRIS MCKENZIE, an individual,

Respondents,

v.

CITY OF SEATTLE, a municipal corporation,

Appellant.

SCOTT SHOCK; SALLY OLJAR; STEVE DAVIES; JOHN PALMER,

Respondents,

v.

CITY OF SEATTLE, a Washington municipal corporation,

Appellant.

ORDER DENYING MOTION FOR RECONSIDERATION AND CHANGING OPINION

Respondent/ cross appellant Kunath filed a motion for reconsideration of the court's opinion filed July 15, 2019. The panel has determined that the motion should be denied and that the opinion be changed as noted below.

Now therefore, it is hereby

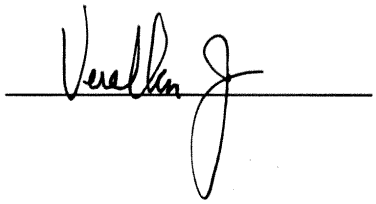
ORDERED that on page 28, change the first sentence in the first full paragraph to "We review a decision to award or deny attorney fees de novo." It is further

ORDERED that on page 29, a citation be added after the sentence "But merely benefiting another is not sufficient." The citation being: "See Malkasian, 157 Wn.2d at 271 ("As courts have repeatedly clarified, the common fund/substantial benefit doctrine is applicable only when the litigant preserves assets or creates a common fund, in addition to conferring a substantial benefit upon others.") (emphasis added). It is further

ORDERED that on page 29, change the last sentence in the first full paragraph to "The court did not err by declining to award attorney fees." It is further

ORDERED that the remainder of the opinion shall remain the same. It is further

ORDERED that appellant's motion for reconsideration is denied.



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

S. MICHAEL KUNATH, Respondent/Cross Appellant, v. CITY OF SEATTLE, Appellant/Cross Respondent, ECONOMIC OPPORTUNITY INSTITUTE, Appellant/Cross Respondent, SUZIE BURKE, an individual; GENE BURRUS and LEAH BURRUS, as individuals and the marital community comprised thereof, PAIGE DAVIS, an individual; FAYE GARNEAU, an individual; KRISTI DALE HOOFMAN, an individual; LEWIS M. HOROWITZ, an individual; TERESA JONES and NIGEL JONES, as individuals and the marital community comprised thereof; NICK LUCIO and JESSICA LUCIO, as individuals and the marital community comprised thereof; LINDA R. MITCHELL, an individual; ERIKA KRISTINA NAGY, an individual; DON ROOT, an individual; LISA STERRITT and BRENT STERRITT, as individuals and the marital community comprised thereof; and NORMA TSUBOI, an individual, Respondents,	)	No. 79447-7-I

v.

CITY OF SEATTLE, a municipality; SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, a department of the City of Seattle; and FRED PODESTA, Director of the Seattle Department of Finance and Administrative Services, in his official capacity,

Appellants.

DENA LEVINE, an individual, CHRISTOPHER RUFO, an individual; MARTIN TOBIAS, an individual; NICHOLAS KERR, an individual; CHRIS MCKENZIE, an individual,

Respondents,

v.

CITY OF SEATTLE, a municipal corporation,

Appellant.

SCOTT SHOCK; SALLY OLJAR; STEVE DAVIES; JOHN PALMER,

Respondents,

v.

CITY OF SEATTLE, a Washington municipal corporation,

Appellant.

ORDER DENYING MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT

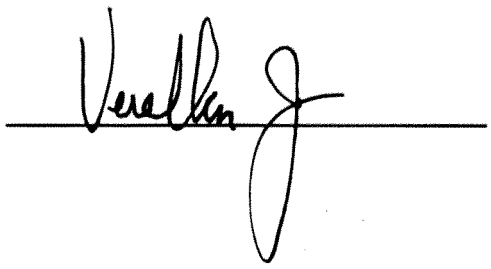
Respondents Levine and Burke filed a motion for reconsideration of the opinion filed July 15, 2019. The panel requested and received answers from appellants City of Seattle and Economic Opportunity Institute. The panel also accepted a reply from Levine and Burke, who requested oral argument. The panel has determined that the motion for reconsideration and the request for oral argument be denied.

Now therefore, it is hereby

ORDERED that respondents Levine and Burke's motion for reconsideration is denied. It is further

ORDERED that the request for oral argument is denied.

FOR THE PANEL:



SEATTLE CITY COUNCIL

Legislative Summary

CB 119002

Record No.: CB 119002 **Type:** Ordinance (Ord) **Status:** Passed

Version: 3 **Ord. no:** Ord 125339 **In Control:** City Clerk

File Created: 06/19/2017

Final Action: 07/14/2017

Title: AN ORDINANCE imposing an income tax on high-income residents; providing solutions for lowering the property tax burden and the impact of other regressive taxes, replacing federal funding potentially lost through federal budget cuts, providing public services, including housing, education, and transit, and creating green jobs and meeting carbon reduction goals; and adding a new Chapter 5.65 to the Seattle Municipal Code.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Herbold,Sawant

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: Emilia.Sanchez@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	06/19/2017	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	06/19/2017	sent for review	Affordable Housing, Neighborhoods, and Finance Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Affordable Housing, Neighborhoods, and Finance Committee						
	Notes:						

1	Full Council	06/19/2017	referred	Affordable Housing, Neighborhoods, and Finance Committee	

Action Text: The Council Bill (CB) was referred. to the Affordable Housing, Neighborhoods, and Finance Committee
Notes:

1	Affordable Housing, Neighborhoods, and Finance Committee	06/21/2017	discussed		

Action Text: The Council Bill (CB) was discussed.
Notes:

1	Affordable Housing, Neighborhoods, and Finance Committee	06/30/2017	discussed		

Action Text: The Council Bill (CB) was discussed in Committee.

1	Affordable Housing, Neighborhoods, and Finance Committee	07/05/2017	pass as amended		Pass

Action Text: The Committee recommends that Full Council pass as amended the Council Bill (CB).
In Favor: 5 Chair Burgess, Vice Chair Herbold, Alternate O'Brien, Bagshaw, Sawant
Opposed: 0

2	Full Council	07/10/2017	passed as amended		Pass

Action Text: The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:
Notes: ACTION 1:

Motion was made and duly seconded to pass Council Bill 119002.

ACTION 2:

Motion was made by Councilmember González and duly seconded, to amend Council Bill 119002, Section 2, Seattle Municipal Code Section 5.65.010.A, as shown in the underlined language below:

Seattle Municipal Code 5.65.010.A

A. All receipts from the tax levied in this Chapter 5.65 shall be restricted in use and shall be used only for the following purposes: (1) lowering the property tax burden and the impact of other regressive taxes, including the business and occupation tax rate; (2) addressing the homelessness crisis; (3) providing affordable housing, education, and transit; (4) replacing federal funding potentially lost through federal budget cuts, including funding for mental health and public health services, or responding to changes in federal policy; (5) creating green jobs and meeting carbon reduction goals; and (6) administering and implementing the tax levied by this Chapter 5.65.

The Motion carried by the following vote:

In favor: 6 - Bagshaw, Burgess, González, Herbold, Johnson, O'Brien
Opposed: 3 - Harrell, Juarez, Sawant

ACTION 3:

Motion was made and duly seconded to pass Council Bill 119002 as amended.

In Favor: 9 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

3	City Clerk	07/12/2017	submitted for Mayor's signature	Mayor
3	Mayor	07/14/2017	Signed	
3	Mayor	07/14/2017	returned	City Clerk
3	City Clerk	07/14/2017	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 125339

COUNCIL BILL 119002

AN ORDINANCE imposing an income tax on high-income residents; providing solutions for lowering the property tax burden and the impact of other regressive taxes, replacing federal funding potentially lost through federal budget cuts, providing public services, including housing, education, and transit, and creating green jobs and meeting carbon reduction goals; and adding a new Chapter 5.65 to the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council finds and declares as follows:

1. Seattle is a growing and prosperous city that can offer great schools, good jobs, and healthy communities for all. However, Seattle faces many urgent challenges, including a homelessness state of emergency; an affordable housing crisis; inadequate provision of mental and public health services; the growing demand for transit; education equity and racial achievement gaps; escalating threats from climate change; and the threat of imminent and drastic reductions in federal funding.

2. Seattle's robust economic growth has created significant opportunity and wealth, but it has also increased the lack of affordable housing, which is a significant financial strain on low- and middle-income households.

3. Seattle is experiencing three-percent population growth, making it the fastest growing major city in the United States and pushing our population over 700,000, which has increased the public need and demand for City services, including housing, education, and transit.

4. Despite increased City funding and intensely focused efforts by City staff and non-profit agencies, the scope and nature of homelessness has grown and worsened since the

Mayor declared a state of emergency on November 2, 2015, and the City Council ratified that declaration. There are now over 3,000 homeless students in Seattle Public Schools. The 2017 Seattle/King County Point-in-Time Count of Persons Experiencing Homelessness found over 8,500 homeless individuals in Seattle. Substantially more resources are necessary to address this crisis.

5. Washington State has among the most regressive tax systems in the United States. According to the Institute on Taxation and Economic Policy, Washington State households with incomes below $21,000 paid on average 16.8 percent of their income in state and local taxes in 2015, whereas households with income in excess of $500,000 paid only 2.4 percent. Seattle's sales tax, which is a highly regressive method of taxation, is among the highest in Washington State, with its total sales tax rate exceeding 10 percent. Regressive taxes such as the sales tax unfairly burden those who are least able to pay the taxes. As a result, regressive taxes contribute to the financial strain on low- and middle-income households, deepen poverty, diminish opportunity for low and middle-income families, disproportionately harm communities of color, hinder efforts toward establishing a more equitable city, and protect and reinforce the privilege of the wealthy.

6. The President of the United States has proposed to imminently eliminate millions of dollars per year from Seattle's budget both directly and indirectly through cuts to state funding. Without additional revenue tools, Seattle is in a weak position to respond to proposed federal budget cuts.

7. Additional revenue tools are necessary to address the City's education equity and racial achievement gaps, recognizing that dedicated City funding for the Seattle Preschool Program is insufficient to meet the goals for universal pre-K, as approved by the voters, and that

the City's funding for Seattle Colleges' 13th Year Promise Scholarship program falls short in providing community college tuition for all qualified and interested high school graduates and GED certificate achievers.

8. In recognition of the serious threat of worsening climate change, Seattle has adopted a goal of achieving zero net greenhouse gas emissions by 2050, and a Climate Action Plan to achieve that goal, and additional resources are needed to meet this goal. Meanwhile, the United States has indicated its intent to withdraw from the Paris Agreement and demonstrated no commitment to slowing climate change, heightening the urgency of local action.

9. Seattle's urgent funding needs should be met through a tax on individual residents with total income above $250,000 per year ($500,000 for joint filers).

10. According to the Tax Foundation, as of 2011, nearly 5,000 local governments levied local income taxes, providing a critical source of revenue to meet local needs.

11. An income tax on high-income residents provides a progressive revenue source to fund the crucial needs listed above and will help the City continue to grow and thrive for all of its citizens.

12. Based on information and data from the City Budget Office, testimony and other information and materials provided and available to the City Council and its committees, the City Council has determined that a tax on total income in excess of $250,000 per year for an individual (and $500,000 for joint filers) does not interfere with the right to earn wages within the City or with the ability of individuals and households to amply provide for a high quality of life.

13. Individuals earning total income above $250,000 per year tend to have a diversified income base; typically derive income from ownership, managerial, and/or profit-

sharing interests in businesses; and are not solely or primarily dependent on wages for their income.

14. The City of Seattle, as a Washington first-class city with extensive powers, including without limitation all the powers which are conferred upon other classes of cities and towns, possesses in the legislative body of the City Council "all powers of taxation for local purposes except those which are expressly preempted by the state" and also has the authority to impose excise taxes for any lawful purpose and on any lawful activity, as provided by RCW 35A.11.020, 35.22.280(32), 35A.82.020, and 35.22.570.

Section 2. A new Chapter 5.65 is added to the Seattle Municipal Code as follows:

Chapter 5.65 INCOME TAX ON HIGH-INCOME RESIDENTS

5.65.010 Use of tax receipts

A. All receipts from the tax levied in this Chapter 5.65 shall be restricted in use and shall be used only for the following purposes: (1) lowering the property tax burden and the impact of other regressive taxes, including the business and occupation tax rate; (2)addressing the homelessness crisis; (3) providing affordable housing, education, and transit; (4) replacing federal funding potentially lost through federal budget cuts, including funding for mental health and public health services, or responding to changes in federal policy; (5) creating green jobs and meeting carbon reduction goals; and (6) administering and implementing the tax levied by this Chapter 5.65.

B. Any changes to the permitted purposes for the use of income tax revenues as provided in subsection 5.65.010.A must be approved by ordinance and be subject to a public hearing and any applicable race and social justice initiative analysis.

5.65.020 Definitions

The definitions contained in Chapter 5.30 of the Seattle Municipal Code shall be fully applicable to this Chapter 5.65, except as may be expressly stated to the contrary herein. The following additional definitions shall apply throughout this Chapter 5.65:

A. "Domicile" means a place where a natural person has a true, fixed, and permanent home, to which the person intends to return after being away for temporary or transitory purposes, including but not limited to vacation, business assignment, educational leave, or military assignment.

B. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the tax year. References to Internal Revenue Service forms and schedules are for tax year 2016.

C. "Permanent place of abode" means a building or structure where a natural person can live that the person permanently maintains, whether the person owns it or not, and is suitable for year-round use.

D. "Resident" means a natural person who:

1. Has a domicile in the City for the entire tax year; or

2. Does not have a domicile in the City for the entire tax year, but maintains a permanent place of abode and spends in the aggregate more than 183 days or any part of a day of the tax year in the City, unless the person establishes to the satisfaction of the Director that the person is in the City only for temporary or transitory purposes including but not limited to interstate travel days.

E. "Resident taxpayer" or "taxpayer" means a resident or a trust or a portion of a trust that is not taxable to the grantor under Subtitle A, Chapter 1, Subchapter J, Part I, Subpart E of the Internal Revenue Code consisting of property transferred to the trust (i) by a resident if such trust or portion of a trust was then irrevocable, or (ii) by a person who was a resident at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

F. "Tax year" means the calendar year during which tax liability is accrued.

G. "Total income" means the amount reported as income before any adjustments, deductions, or credits on a resident taxpayer's United States individual income tax return for the tax year, listed as "total income" on line 22 of Internal Revenue Service Form 1040, "total income" on line 15 of Internal Revenue Service Form 1040A, "total income" on line 9 of Internal Revenue Service Form 1041, or the equivalent on any form issued by the Internal Revenue Service that is not reported on Schedule K-1 for a beneficiary.

5.65.030 Tax imposed—Rates

A. This Chapter 5.65 applies to income required to be included in total income under the Internal Revenue Code received on and after January 1, 2018.

B. There is imposed a tax on the total income of every resident taxpayer in the amount of their total income multiplied by the applicable rates as follows:

Tax Filing Status	Total Income	Rate
Resident taxpayers whose Internal Revenue Service filing status was "single," "head of household," "qualifying widow(er) with dependent child," or "married filing separately" for the tax year, including individuals making the election in subsection 5.65.040.A.1, or a trust	Total income in the tax year up to $250,000	0%
	Amount of total income in the tax year in excess of $250,000	2.25%
Resident taxpayers whose Internal Revenue Service filing status was "married filing jointly" for the tax year	Total income in the tax year up to $500,000	0%

and not calculating total income based on "married filing separately" status as provided for under subsection 5.65.040.A.1	Amount of total income in the tax year in excess of $500,000	2.25%

C. All total income amounts in the table in subsection 5.65.030.B shall be adjusted annually on January 1, 2019, and on January 1 of every year thereafter by 100 percent of the average annual growth rate of the bi-monthly Consumer Price Index (CPI-U) for the Seattle-Tacoma-Bremerton area as published by the United States Department of Labor for the 12-month period ending in June of the prior year. To calculate the new total income amount, the prior year's total income amount will be multiplied by the sum of one and the annual percent change in the CPI-U. If the average annual growth rate is negative, no adjustment shall be made for the year.

5.65.040 Non-resident spouses and beneficiaries

A. If a resident taxpayer is a natural person married to a non-resident who has chosen "married filing jointly" status on their federal tax return form for the tax year, the resident taxpayer may either:

1. Calculate total income based on the amount of total income that would have been reported on the resident taxpayer's federal tax return form for the tax year had the resident taxpayer chosen "married filing separately" status; or

2. Treat the non-resident spouse as a resident for purposes of taxes imposed under this Chapter 5.65 for the tax year.

B. If the resident taxpayer chooses to calculate total income as provided for under subsection 5.65.040.A.1, the resident taxpayer must include with their return filed with the City documentation sufficient to show how the resident taxpayer allocated income reported on the federal tax return between the resident taxpayer and the non-resident spouse. The resident

taxpayer may complete and submit to the City Internal Revenue Service Form 8958 or the equivalent to satisfy this documentation requirement.

5.65.050 Preempted sources of income

Any sources of income included in income reported on a resident taxpayer's federal tax return that the laws of the United States prohibit cities from taxing, or that a final judgment of a court with jurisdiction to bind the City has determined cannot lawfully be included, shall not be included in a resident taxpayer's total income for purposes of calculating taxes due under this Chapter 5.65.

5.65.060 Credit for income taxed in other jurisdictions

A. A resident taxpayer shall be allowed a credit against the income tax owed under this Chapter 5.65 for a tax year in the amount determined under subsection 5.65.060.B, where:

1. The taxpayer's total income for the year includes (a) revenue from a business, profession, or rental of real or tangible personal property outside the City; (b) gains from the sale or exchange of real or tangible personal property outside the City; (c) salaries, wages, commissions, or other compensation for work done or services performed or rendered outside the City; or (d) if the taxpayer has a domicile in the City for the entire tax year, income from intangible property; and

2. The taxpayer is subject to and has paid an income tax on such income to another state or local government.

B. The amount of the credit shall be the amount of actual tax that the taxpayer paid on the income described in subsection 5.65.060.A.1 to any other state or local government;

provided, however, that the tax owed after the credit shall not be less than the amount of tax that would be payable if the income described in subsection 5.65.060.A.1 were disregarded.

5.65.070 Who files—When due and payable—Reporting—Failure to file returns—Amended returns

A. Tax returns under this Chapter 5.65 must be filed by resident taxpayers whose total income is subject to a rate above zero percent in subsection 5.65.030.B, regardless of whether any tax is owed.

B. The return for any deceased individual who would have to file under subsection 5.65.070.A shall be made and filed by their executor, administrator, or other person charged with administering their estate.

C. Taxes shall be paid as provided in this Chapter 5.65 and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer, executor, administrator, or other agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is true and complete. The Director is authorized, but not required, to make electronically available tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes, when and as due under this Chapter 5.65.

D. All taxes imposed under this Chapter 5.65 shall be due and payable annually. Tax returns and payments are due on or before April 15 of the year following the tax year. The Director may extend the time for filing the annual return for a period of not more than one year upon written request by the taxpayer showing good cause why an extension is necessary. A taxpayer is entitled to one automatic six-month extension of the due date for a tax year by filing with the City a copy of Internal Revenue Service Form 4868 or the equivalent on or before the

due date. Interest and penalties shall not be assessed if the return is filed and the tax due is paid within the extended time and all other filing and payment requirements of this Chapter 5.65 are satisfied.

E. If April 15 or any other date computed in this subsection is a Saturday, Sunday, or City or federal legal holiday, the date of such event or action shall be the next succeeding day which is not a Saturday, Sunday, or City or federal legal holiday. The Director may extend the filing deadline for a tax year in the event of a natural disaster or other emergency. Tax returns and taxes not received on or before the due date are subject to penalties and interest in accordance with this Chapter 5.65, in addition to any other civil or criminal sanction or remedy that may be available.

F. Any return or remittance which is transmitted to the City by United States mail is deemed filed or received on the date stamped by the United States Postal Service upon the envelope containing it. The Director may allow electronic filing of returns or remittance from any taxpayer. A return or remittance that is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director. The reference to the United States Postal Service shall be treated as including any delivery service designated by the Secretary of the Treasury of the United States pursuant to § 7502 of the Internal Revenue Code.

G. If any taxpayer fails, neglects, or refuses to file a return as and when required in this Chapter 5.65, the Director is authorized to determine and assess the amount of the tax due by obtaining facts and information upon which to base their estimate of the tax due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so

determined, together with any penalty and interest due; the total of such amounts shall thereupon become immediately due and payable.

H. Within 60 days after the final determination of any federal, state, or local tax liability affecting the amount of tax owed under this Chapter 5.65, that taxpayer shall make and file an amended return with the City based upon such final determination stating whether the federal, state, or local tax changes are correct or state wherein it is erroneous and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than $10. Interest and penalties shall not be imposed on any additional tax owed under this subsection if the amended return is timely filed and the additional tax owed is timely paid. Any additional tax due as a result of a federal, state, or local change in tax liability may be assessed at any time if no return showing such change has been filed.

5.65.080 Payment methods

A. Taxes, interest, and penalties shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, or cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax, interest, and/or penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax due unless the amount paid is the full amount due.

B. The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties, then interest owing, and

finally upon the tax, unless the taxpayer directs otherwise in writing on a form approved by the Director on the date the payment is made.

C. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge in an amount to be set by the Director.

D. The Director is authorized, but not required, to mail tax return forms or written reminders to taxpayers, but failure of the taxpayer to receive any such forms or reminders shall not excuse the taxpayer from filing returns and making payment of the taxes, when and as due under this Chapter 5.65.

5.65.090 Records to be preserved—Examination—Estoppel to question assessment

A. Every taxpayer who is liable for, or who the Director believes to be liable for, any tax owed under this Chapter 5.65 shall keep and preserve, for a period of three years after filing a tax return or two years after the date the tax was paid, whichever is later, such records as may be necessary to determine taxpayer's domicile and residence and the amount of any tax for which the taxpayer may be liable; which records shall include copies of all federal, state, and local income tax returns and reports made by the taxpayer.

B. Upon written request by the Director or a duly authorized agent, the taxpayer is required to furnish the opportunity for the Director or authorized agent to investigate and examine the records as defined in subsection 5.65.090.A, at a reasonable time and place designated in the request.

C. If a taxpayer does not keep the necessary records within the City, it shall be sufficient if that taxpayer:

1. Produces within the City such records as may be required by the Director, or

2. Bears the cost of examination by the Director or duly authorized agent at the place where the pertinent records are kept; provided that the taxpayer electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals, and incidental expenses, subject to adjustment upon completion of the examination.

D. Where a taxpayer fails, or refuses a Department request, to provide or make available records, the Director is authorized to determine the amount of the tax due by obtaining facts and information upon which to base the estimate of the tax due. Such tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty and interest due; the total of such amounts shall thereupon become immediately due and payable.

5.65.100 Underpayment of tax, interest, or penalty

A. If, upon examination of any returns, or from other information obtained by the Director, the Director determines that a tax, interest, or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax and penalties only. The Director shall notify the taxpayer by mail of the additional amount, which shall become due and shall be paid within 30 days from the date of the notice, or within such time as the Director may provide in writing.

B. The Director shall compute interest based on the underpayment rate under the Internal Revenue Code, currently set forth in 26 U.S.C. § 6621.

5.65.110 Time in which assessment may be made

The Director shall assess, or correct an assessment for, additional taxes, penalties, or interest for a tax year within the later of (1) three years after the tax was due or the return was filed, whichever is later, or (2) one year after a final decision in any administrative or judicial review initiated by the taxpayer under this chapter for the tax year; provided, however, the time limit may be extended if both the Director and the taxpayer consent in writing to the extension. Tax, penalties, or interest, however, may be assessed at any time if no return is filed or a false or fraudulent return is filed.

5.65.120 Overpayment of tax, penalty, or interest—Credit or refund—Interest rate

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's tax returns or other records, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection 5.65.120.B, an application for a refund must be filed within three years after the tax was due or paid, whichever is later.

B. The execution of a written waiver shall extend the time for applying for, or making, a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check, warrant, or wire transfer drawn upon and payable from such funds as the City may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any taxpayer shall be paid in the same manner as provided in subsection 5.65.120.C, upon the filing with the Director a certified copy of the order or judgment of the court.

E. The Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer based on the overpayment rate under the Internal Revenue Code, currently set forth in 26 U.S.C. § 6621.

5.65.130 Monetary penalties

A. A taxpayer who fails to pay tax owed under this Chapter 5.65 when due is liable, in addition to interest, to a penalty of one percent of the amount of the unpaid tax for each month or fraction of a month, not to exceed a total penalty of 25 percent of the unpaid tax. If any part of any underpayment of tax owed under this chapter is due to intentional disregard of this Chapter 5.65 or rules or regulations adopted by the Director under Section 5.65.190, but without intent to defraud, an additional penalty of $10 or 10 percent of the total amount of the deficiency in the tax, whichever is greater, shall be added. If any part of the underpayment is due to fraudulent intent to evade the tax imposed under this chapter, an additional penalty of 100 percent of the deficiency shall be added.

B. Any taxpayer who fails to file a return with the Director on or before the due date, who fails to include all of the information required to be shown on the return, or who includes incorrect information on a return shall pay a penalty of $250 for each return with respect to which such a failure occurs; provided, however, the penalty shall be waived if the failure to include all of the information required or the inclusion of incorrect information is corrected by the taxpayer within 30 days of written notice from the Director as provided for under subsection

5.65.130.D. If the act or omission is due to intentional disregard of this Chapter 5.65 or rules or regulations adopted by the Director under Section 5.65.190, but without intent to defraud, an additional penalty of $500 shall be added. If the act or omission is due to fraudulent intent to evade the tax imposed under this Chapter 5.65, an additional penalty of $1,000 shall be added.

C. If a claim for refund or credit under this Chapter 5.65 is made for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the taxpayer making such claim shall be liable for a penalty in an amount equal to 20 percent of the excessive amount. For purposes of this Section 5.65.130, the term "excessive amount" means, in the case of any taxpayer, the amount of the claim for refund or credit for any tax year exceeds by at least 50 percent the amount of such claim allowable under this Chapter 5.65 for such tax year.

D. The Director shall notify a taxpayer by mail of any penalties, which shall become due and shall be paid within 30 days from the date of the notice, or within such time as the Director may provide in writing.

E. Upon demonstrating to the Director that a penalty has been imposed on an innocent spouse, the Director is authorized to cancel such penalty with respect to the innocent spouse.

5.65.140 Cancellation of penalties

A. The Director may cancel any penalties assessed under subsection 5.65.130.A or 5.65.130.B if the taxpayer shows that the act or omission giving rise to the penalty was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that they exercised ordinary care and prudence in making arrangements to complete and file an

accurate return and pay the tax owed by the due date but, nevertheless, failed to do so due to circumstances beyond their control.

B. A request for cancellation of penalties must be received by the Director within 60 days after the date the Director mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

5.65.150 Amnesty

The Director may from time to time declare periods of amnesty in which penalties assessed under subsections 5.65.130.A, 5.65.130.B, or 5.65.130.C, or any combination thereof, may be waived. Such periods of amnesty and the terms thereof may be established upon a finding by the Director that they are likely to have the effect of increasing revenues to the City.

5.65.160 Review of Director's assessment or denial of refund

A. Any taxpayer aggrieved by the amount of the tax, interest, or penalty assessed by the Director or by the denial of a refund by the Director may:

1. Appeal the Director's assessment or refund denial to the Hearing Examiner by filing a petition for review with the Office of the Hearing Examiner pursuant to Section 5.65.170; or

2. File a complaint in King County Superior Court to appeal the Director's assessment or refund denial.

The petition or complaint shall be filed within 30 days from the date that the assessment or denial notice was mailed to the taxpayer, or within the period covered by any extension of said due date granted in writing by the Director whichever is later. The Director may extend the due date for filing an appeal with the Hearing Examiner or a refund suit with the Superior Court only

if the taxpayer, within the 30-day period, makes written application showing good cause why an extension is necessary.

B. The Director's assessment or refund denial shall be regarded as prima facie correct, and the taxpayer shall have the burden to prove that the tax assessed or paid by them is incorrect, either in whole or in part, and to establish the correct amount of tax.

C. Assessments may be appealed to the Hearing Examiner without prior payment; provided, however, that interest shall continue to accrue on unpaid taxes and penalties to the full extent permitted by law.

D. The methods for obtaining review of the Director's assessment or refund denial set forth in this Section 5.65.160 and Sections 5.65.170 and 5.65.180 are the exclusive remedies for reviewing an assessment or refund denial, and must be strictly complied with.

5.65.170 Appeal to the Hearing Examiner

A. A taxpayer electing to appeal to the Hearing Examiner pursuant to Section 5.65.160 must provide a copy of the petition to the Director and the City Attorney on or before the date the petition is filed with the Hearing Examiner. If no such petition is filed with the Hearing Examiner and provided to the Director and City Attorney within the 30-day period, and a complaint is not filed, the assessment covered by the notice shall become final and no refund request may be made for the audit period covered in that assessment.

B. The petition shall set forth the reasons why the assessment should be reversed or modified. The petition shall also include the amount of the tax, interest, or penalties that the taxpayer believes to be due. If the appeal is from the denial of a refund, the petition shall set forth the amount of refund or credit believed to be due.

C. The Hearing Examiner shall fix the time and place of the hearing and notify the taxpayer thereof by mail or other means provided in regulations. The hearing shall be conducted in accordance with the procedures for hearing contested cases in Chapter 3.02.

D. The Hearing Examiner may, by subpoena, require the attendance of any person at the hearing, and may also require them to produce pertinent records. Any person served with such a subpoena shall appear at the time and place therein stated and produce the records required, if any, and shall testify truthfully under oath administered by the Hearing Examiner as to any matter required of them pertinent to the appeal; and to fail or refuse to do so is sanctionable. The City Attorney shall seek enforcement of a Hearing Examiner subpoena in an appropriate court.

E. The Hearing Examiner shall ascertain the correct amount of the tax, interest, or penalty due either by affirming, reversing, or modifying an action of the Director. Reversal or modification is proper if the Director's assessment or refund denial violates the terms of this Chapter 5.65 or rules or regulations adopted by the Director under Section 5.65.190.

5.65.180 Judicial review of the Hearing Examiner's decision

A. The taxpayer, authorized agent, any other person or entity beneficially interested or aggrieved, or the Director of Finance and Administrative Services, may obtain judicial review of the decision of the Hearing Examiner by applying for a writ of review in the King County Superior Court within 30 days from the date of the decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 5.65.180.

5.65.190 Director of Finance and Administrative Services to make rules

A. The Director shall have the power and it shall be the Director's duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this Chapter 5.65 or with law for the purpose of carrying out the purposes and provisions of this Chapter 5.65, and it shall be unlawful to violate or fail to comply with any such rule or regulation.

B. In order to ensure a fair and equitable base for taxation and to avoid the tax under this Chapter 5.65 being imposed on the same income twice, the Director is authorized to issue rules and regulations to make equitable adjustments in order to properly reflect the income of a resident taxpayer.

5.65.200 Ancillary authority of Director

The Director is authorized to enter into agreements with any other taxing jurisdiction, including the Internal Revenue Service of the United States and state and other local jurisdictions that impose taxes on personal income, earned or unearned:

A. To acquire such taxpayer information necessary to most effectively collect the taxes imposed by this Chapter 5.65, determine whether taxpayers are or are not required to file a return for taxes under this Chapter 5.65, determine the amount of taxes due under this Chapter 5.65, conduct audits, and otherwise enact the provisions of this Chapter 5.65; or

B. To conduct an audit or a joint audit of a taxpayer by using an auditor employed by The City of Seattle, another public entity, or a contract auditor; provided that such contract auditor's pay is not in any manner based upon the amount of tax assessed.

5.65.210 Mailing of notices

A. Any notice required by this Chapter 5.65 to be mailed to any taxpayer shall be sent by ordinary mail, addressed to the last known address of the taxpayer as shown by the records of the Director.

B. Failure of the taxpayer to receive any mailed notice shall not release the taxpayer from any tax, interest, or penalties, nor shall such failure operate to extend any time limit set by the provisions of this Chapter 5.65. It is the responsibility of the taxpayer to inform the Director in writing of a change in the taxpayer's address.

C. Nothing in this Section 5.65.210 prohibits the Director or duly authorized agent from delivering an assessment by a tax administrator by personal service.

5.65.220 Tax declared additional

The tax on income levied by this Chapter 5.65 shall be additional to any other tax imposed or levied under any law or any other ordinance of The City of Seattle except as herein otherwise expressly provided.

5.65.230 Public disclosure—Confidentiality—Information sharing

A. For purposes of this Section 5.65.230:

1. "Disclose" means to make known to any person in any manner whatever a return or tax information.

2. "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, this Chapter 5.65 which is filed with the Director by, on behalf of, or with respect to a taxpayer, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed.

3. "Tax information" means:

a. A taxpayer's identity;

b. The nature, source, or amount of the taxpayer's income, payments, receipts, exclusions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's returns, records, or any other source;

c. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; and

d. Other data received by, recorded by, prepared by, furnished to, or collected by the Director with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a taxpayer under this Chapter 5.65 for a tax, penalty, interest, or criminal offense.

However, data, material, or documents that do not disclose information related to an identifiable taxpayer do not constitute tax information under this Section 5.65.230.

4. "City agency" means every City office, department, division, bureau, board, commission, or other City agency.

5. "Taxpayer identity" means the taxpayer's name, address, telephone number, social security number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

B. Returns and tax information are confidential and privileged to the full extent permitted by law, and except as authorized by this Section 5.65.230 or applicable law, neither the Director nor any other person shall disclose any return or tax information.

C. This Section 5.65.230 does not prohibit the Director or an authorized designee from:

1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding (a) in respect to any tax imposed under this Chapter 5.65 if the taxpayer is a party in the proceeding; or (b) in which the taxpayer about whom such return or tax information is sought and the City or a City agency are adverse parties in the proceeding; or (c) in accordance with a final judicial order of a court of competent jurisdiction.

2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules or regulations adopted pursuant to Section 5.65.190, such return or tax information regarding a taxpayer to (a) such taxpayer or, in the case of a jointly filed return, either of the spouses with respect to whom the return is filed; (b) to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure; (c) to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person; or (d) to the administrator, executor, or trustee of a deceased taxpayer's estate, or any heir at law, next of kin, or beneficiary under the will of such decedent. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure is contrary to any agreement entered into by the Director that provides for the reciprocal exchange of information with other government agencies, which agreement requires confidentiality with respect to such information, unless such information is required to be disclosed to the taxpayer by the order of any court;

3. Publishing statistics in a form that does not disclose information with respect to identifiable taxpayers;

4. Disclosing such return or tax information for official purposes only if the Director determines that it is necessary for the implementation, administration or enforcement of this Chapter 5.65, and then only to the extent necessary for such purposes, to the City Attorney or a City agency dealing with matters of taxation or revenue or their authorized designees;

5. Permitting the Director's records to be audited and examined by the proper City, state, or federal officer, their agents and employees;

6. Disclosing any such return or tax information in response to, or in support of a request for, a search warrant, subpoena, or other order issued by hearing examiner or a court of competent jurisdiction; or

7. Disclosing any such return or tax information to the proper officer of the Internal Revenue Service or the tax department of any state or local jurisdiction, for official purposes including but not limited to disclosure pursuant to information sharing agreements containing confidentiality provisions equivalent to section 5.65.230.

D. Any person acquiring knowledge of any return or tax information in the course of their employment with the Director and any person acquiring knowledge of any return or tax information as provided under subsection 5.65.230.C.4, 5.65.230.C.5, 5.65.230.C.6, or 5.65.230.C.7, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this Section 5.65.230, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the City, such person must forfeit such office or employment and is incapable of holding any public office or employment in this City for a period of two years thereafter.

5.65.240 Tax constitutes debt

Any tax due and unpaid under this Chapter 5.65, and all interest and penalties thereon, shall constitute a debt to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

5.65.250 Unlawful actions—Criminal offenses

A. It shall be unlawful for any person subject to the provisions of this Chapter 5.65:

1. To violate or fail to comply with any of the provisions of this Chapter 5.65, or any rule or regulation adopted by the Director;

2. To make any false statement on any return;

3. To aid or abet any taxpayer in any attempt to evade payment of a tax owed under this Chapter 5.65;

4. To fail to appear or testify in response to a subpoena issued pursuant to Section 3.02.120 in any proceeding to determine compliance with this Chapter 5.65;

5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter 5.65;

6. In any manner to hinder or delay the City or any of its officers in carrying out the provisions of this Chapter 5.65.

B. Each violation of or failure to comply with the provisions of this Chapter 5.65 shall constitute a separate offense. Any person who willfully engages in an act or acts or willfully causes another to engage in an act or acts defined in subsection 5.65.250.A is guilty of a gross misdemeanor, punishable in accordance with Section 12A.02.070. The provisions of Chapters 12A.02 and 12A.04 apply to the offenses defined in subsection 5.65.250.A.

C. Prosecution pursuant to this Section 5.65.250 shall not be commenced more than three years after the Director knew or should have known that the act(s) constituting the offense occurred. The penalties and punishments established by this Section 5.65.250 shall be in addition to all other penalties provided by law.

D. Upon a determination that a person is subject to criminal prosecution under this Section 5.65.250, the Director and agents of the Director, who are commissioned as non-uniformed special police officers pursuant to Section 5.55.225, may issue citations and make arrests for criminal violations of this Section 5.65.250.

5.65.260 Closing agreement provisions

The Director may enter into an agreement in writing with any taxpayer relating to the liability of such taxpayer in respect of any tax imposed by this Chapter 5.65 and administered by the Director for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and to the taxpayer so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer; and

B. In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

5.65.270 Charge-off of uncollectible taxes

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer.

5.65.280 Reporting

A. The Department shall submit to the Council and Executive, and make available to the public, a report that indicates how revenues raised by the tax imposed in this Chapter 5.65 were expended within six months of the end of any tax year in which expenditures of such revenues were made.

B. The Department annually shall submit to the Council and Executive, and make available to the public, a report that makes recommendations for improvements and amendments to this Chapter 5.65, including but not limited to code changes required to enhance enforcement and collection of the tax imposed.

5.65.290 Severability

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its application to any taxpayer or other person or circumstance, does not affect the validity of the remainder of this ordinance or the validity of its application to other taxpayers or other persons or circumstances.

Section 3. No later than November 15, 2018, the Director of Finance shall submit to the Council and file with the City Clerk a report summarizing the rules adopted by the Director under Section 5.65.190 of the Seattle Municipal Code. A complete set of rules shall be submitted

along with the report. The Council intends to review the rules to ensure that they are consistent with legislative intent.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 10th day of July, 2017, and signed by me in open session in authentication of its passage this 10th day of July, 2017.

President _____ of the City Council

Approved by me this 14 day of July, 2017.

Edward B. Murray, Mayor

Filed by me this 14th day of July, 2017.

for Monica Martinez Simmons, City Clerk

(Seal)

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 7. Revenue and Taxation (Refs & Annos)

West's RCWA Const. Art. 7, § 1

§ 1. Taxation

Effective: December 7, 2006
Currentness

The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: *Provided,* That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both. Such property as the legislature may by general laws provide shall be exempt from taxation. Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of fifteen thousand ($15,000.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner.

Credits
Adopted 1889. Amended by Amendment 14 (Laws 1929, ch. 191, § 1, p. 499, approved Nov. 1930); Amendment 81 (Laws 1988, H.J.R. No. 4222, p. 1551, approved Nov. 8, 1988); Amendment 98 (Laws 2006, H.J.R. 4223, approved November 7, 2006, effective December 7, 2006).

West's RCWA Const. Art. 7, § 1, WA CONST Art. 7, § 1
Current through amendments approved 11-8-2016.

End of Document

RCW 35A.11.020

Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns.

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, * 82.36.440, 48.14.020, and 48.14.080.

[2007 c 218 § 66; 1993 c 83 § 8; 1986 c 278 § 7; 1984 c 258 § 807; 1969 ex.s. c 29 § 1; 1967 ex.s. c 119 § 35A.11.020.]

NOTES:

***Reviser's note:** Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2016.

Intent—Finding—2007 c 218: See note following RCW **1.08.130**.

Effective date—1993 c 83: See note following RCW **35.21.163**.

Severability—1986 c 278: See note following RCW **36.01.010**.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW **3.30.010**.

Effective date—1969 ex.s. c 29: "The effective date of this act is July 1, 1969." [**1969 ex.s. c 29 § 2**.]

RCW 35A.82.020

Licenses and permits—Excises for regulation.

A code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity: PROVIDED, That no license or permit to engage in any such activity or place shall be granted to any who shall not first comply with the general laws of the state.

No such license shall be granted to continue for longer than a period of one year from the date thereof and no license or excise shall be required where the same shall have been preempted by the state, nor where exempted by the state, including, but not limited to, the provisions of RCW **36.71.090** and chapter **73.04** RCW relating to veterans.

[**1967 ex.s. c 119 § 35A.82.020.**]

RCW 35.22.280

Specific powers enumerated.

Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his or her heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to

locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets" are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same. However, no license shall be granted to continue for longer than one year from the date thereof. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for three hundred sixty-four days, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto.

[**2011 c 96 § 25; 2009 c 549 § 2046; 2008 c 129 § 1; 1993 c 83 § 4; 1990 c 189 § 3; 1986 c 278 § 3; 1984 c 258 § 802; 1977 ex.s. c 316 § 20; 1971 ex.s. c 16 § 1; 1965 ex.s. c 116 § 2; 1965 c 7 § 35.22.280.** Prior: **1890 p 218 § 5;** RRS § 8966.]

NOTES:

Findings—Intent—2011 c 96: See note following RCW **9A.20.021**.

Effective date—1993 c 83: See note following RCW **35.21.163**.

Severability—1986 c 278: See note following RCW **36.01.010**.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW **3.30.010**.

Severability—1977 ex.s. c 316: See note following RCW **70.48.020**.

PACIFICA LAW GROUP

November 15, 2019 - 11:57 AM

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Appellate Court Case Title:	City of Seattle, Appellant/Cr-Respondent v. S. Michael Kunath, Respondent/Cr-Appellant

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